

PART 2

NETWORKS, SERVICES AND THE RADIO SPECTRUM

CHAPTER 1

ELECTRONIC COMMUNICATIONS NETWORKS AND SERVICES

Preliminary

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22 Meaning of electronic communications networks and services

- (1) In this Act “electronic communications network” means –
 - (a) a transmission system for the conveyance, by the use of electrical, magnetic or electro-magnetic energy, of signals of any description; and
 - (b) such of the following as are used, by the person providing the system and in association with it, for the conveyance of the signals –
 - (i) apparatus comprised in the system;
 - (ii) apparatus used for the switching or routing of the signals; and
 - (iii) software and stored data.
- (2) In this Act “electronic communications service” means any service consisting in, or having as its principal feature, the conveyance by means of an electronic communications network of signals, except in so far as it is a content service.
- (3) In this Act “associated facility” means any facility which –
 - (a) is available for use in association with the use of an electronic communications network or electronic communications service (whether or not one provided by the person making the facility available); and
 - (b) is so available for the purpose of –
 - (i) making the provision of that network or service possible;
 - (ii) making possible the provision of other services provided by means of that network or service; or
 - (iii) supporting the provision of such other services.
- (4) In this Act –
 - (a) references to the provision of an electronic communications network include references to its establishment, maintenance or operation;
 - (b) references, where one or more persons are employed or engaged to provide the network or service under the direction or control of another person, to the person by whom an electronic communications network or electronic communications service is provided are confined to that other person; and
 - (c) references, where one or more persons are employed or engaged to make facilities available under the direction or control of another person, to the person by whom any associated facilities are made available are confined to that other person.
- (5) Paragraphs (a) and (b) of subsection (4) apply in relation to references in subsection (1) to the provision of a transmission system as they apply in relation to references in this Act to the provision of an electronic communications network.

- (6) The reference in subsection (1) to a transmission system includes a reference to a transmission system consisting of no more than a transmitter used for the conveyance of signals.
- (7) In subsection (2) “a content service” means so much of any service as consists in one or both of the following –
 - (a) the provision of material with a view to its being comprised in signals conveyed by means of an electronic communications network;
 - (b) the exercise of editorial control over the contents of signals conveyed by means of a such a network.
- (8) In this section references to the conveyance of signals include references to the transmission or routing of signals or of parts of signals and to the broadcasting of signals for general reception.
- (9) For the purposes of this section the cases in which software and stored data are to be taken as being used for a particular purpose include cases in which they have been installed or stored in order to be used for that purpose and are available to be so used.
- (10) In this section “signal” includes –
 - (a) anything comprising speech, music, sounds, visual images or communications or data of any description; and
 - (b) signals serving for the impartation of anything between persons, between a person and a thing or between things, or for the actuation or control of any apparatus.

Notification by providers

23 Advance notification to OFCOM

- (1) A person shall not –
 - (a) provide a designated electronic communications network,
 - (b) provide a designated electronic communications service, or
 - (c) make available any designated associated facility,unless, before beginning to provide it or to make it available, he has given a notification to OFCOM of his intention to provide that network or service, or to make that facility available.
- (2) An electronic communications network, electronic communications service or associated facility is designated for the purposes of this section if it is of a description of networks, services or facilities that is for the time being designated for those purposes by OFCOM as a description of networks, services or facilities for which notification under this section is required.
- (3) A person who has given a notification for the purposes of subsection (1) shall, before –
 - (a) providing or making available the notified network, service or facility with any significant differences, or
 - (b) ceasing to provide it or to make it available,give a notification to OFCOM of his intention to modify what he provides or makes available or, as the case may be, of his intention to cease to provide the network or service or to make the facility available.
- (4) A notification for the purposes of this section must –

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- (a) be sent to OFCOM in such manner and form as OFCOM may require; and
 - (b) contain all such information as OFCOM may require.
 - (5) The only information OFCOM may require a notification to contain is—
 - (a) a short description of any network, service or facility that is proposed or (where modifications are proposed) of the proposed modifications; 5
 - (b) a declaration of the relevant proposal of the person giving the notification;
 - (c) the time when it is intended that effect should be given to the relevant proposal; 10
 - (d) particulars identifying the person giving the notification;
 - (e) particulars identifying one or more persons with addresses in the United Kingdom who, for the purposes of matters relating to the notified network, service or facility, are authorised to accept service at such an address on behalf of the person giving the notification; 15
 - (f) particulars identifying one or more persons who may be contacted if there is an emergency that is caused by or affects the provision of the notified network, service or facility;
 - (g) addresses and other particulars necessary for effecting service on or contacting each of the persons mentioned in paragraphs (d) to (f). 20
 - (6) In subsection (5) “the relevant proposal” means whichever of these is the proposal of the person giving the notification—
 - (a) a proposal to provide the network or service described in the notification or to make available the facility so described;
 - (b) a proposal to make the modifications that are so described of the network, service or facility specified in the notification; or 25
 - (c) a proposal to cease to provide the network or service so specified or to cease to make available the facility so specified.
 - (7) Requirements imposed under subsection (4) shall not require a notification by any person to contain particulars falling within subsection (5)(e) in a case in which— 30
 - (a) that person is resident in a member State or has a place of business in a member State;
 - (b) the notification contains a statement under subsection (8);
 - (c) the notification sets out an address in a member State at which service will be accepted by the person who, in accordance with that statement, is authorised to accept it; and 35
 - (d) OFCOM are satisfied that adequate arrangements exist for effecting service on that person at that address.
 - (8) That statement is one which— 40
 - (a) declares that the person authorised, for the purposes of matters relating to the notified network, service or facilities, to accept service on behalf of the person giving the notification is that person himself; or
 - (b) identifies another person who is resident in a member State, or has a place of business in such State, as the person so authorised. 45
 - (9) The reference in subsection (3) to providing or making available a notified network, service or facility with significant differences is a reference to continuing to provide it or make it available after a change in whatever falling within subsection (5)(a) to (g) was last notified to OFCOM under this section.

- (10) References in this section to accepting service at any address are references –
 - (a) to accepting service of documents or process at that address; or
 - (b) otherwise to receiving notifications at that address;and the reference in subsection (7) to effecting service at an address is to be construed accordingly. 5
- (11) Where any description of electronic communications network, electronic communications service or associated facility is designated for the purposes of this section at a time when a network, service or facility of that description is already being provided or made available by a person –
 - (a) that person’s obligation under this section to give a notification before beginning to provide or make available that network, service or facility shall have effect as an obligation to give a notification within such period after the coming into force of the designation as may be specified in the notice in which the designation is contained; and 10
 - (b) that notification is to be one stating that that person is already providing the network or service, or making the facility available (rather than that it is his intention to do so). 15

24 Designations and requirements for the purposes of s. 23

- (1) Before –
 - (a) making or withdrawing a designation for the purposes of section 23, or 20
 - (b) imposing or modifying any requirement under subsection (4) of that section,OFCOM must consult such of the persons who, in their opinion, are likely to be affected by it as they think fit.
- (2) Before making or withdrawing a designation for the purposes of section 23 OFCOM must also consult the Secretary of State. 25
- (3) A designation for the purposes of section 23 or a requirement under subsection (4) of that section –
 - (a) shall be made or imposed, and
 - (b) may be withdrawn or modified, 30by a notice published in such manner as OFCOM consider appropriate for bringing the designation, requirement, withdrawal or modification to the attention of the persons who, in their opinion, are likely to be affected by it.
- (4) Requirements imposed under section 23(4) may make different provision for different cases. 35

25 Register of designations and providers

- (1) It shall be the duty of OFCOM to establish and maintain a register for the purposes of section 23.
- (2) OFCOM shall record in the register –
 - (a) every designation by them for the purposes of section 23; 40
 - (b) every withdrawal by them of such a designation; and
 - (c) every notification given to them under that section.
- (3) Information recorded in the register must be so recorded in such manner as OFCOM consider appropriate.

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- (4) OFCOM shall make the register available for public inspection –
 - (a) during such hours, and
 - (b) on payment of such fees,
 as they may by order prescribe.

 - (5) Section 255 applies to the power of OFCOM to make an order under subsection (4). 5

 - (6) It shall be the duty of OFCOM to publish a notification setting out –
 - (a) the times at which the register is for the time being available for public inspection; and
 - (b) the fees that must be paid for, or in connection with, an inspection of the register. 10

 - (7) The publication of a notification under subsection (6) must be in such manner as OFCOM consider appropriate for bringing it to the attention of the persons who, in their opinion, are likely to be affected by it.

 - (8) In this section “designated”, in relation to an electronic communications network, electronic communications service or associated facility, means of a description designated for the purposes of section 23. 15

26 Notification of contraventions of s. 23

- (1) Where OFCOM determine that there are reasonable grounds for believing that a person has failed to give a notification that he is required to give by section 23, they may give him a notification under this section. 20

- (2) A notification under this section is one which –
 - (a) sets out the determination made by OFCOM; and
 - (b) specifies the period during which the person notified has an opportunity of doing the things specified in subsection (3). 25

- (3) Those things are –
 - (a) making representations about the matters notified; and
 - (b) providing OFCOM with the information which the notified person should have provided for the purposes of section 23 but has not.

- (4) Subject to subsections (5) to (7), the period for the doing of those things that is specified in a notification under this section must be the period of one month beginning with the day after the day on which the notification was given. 30

- (5) OFCOM may, if they think fit, allow a longer period for the doing of the things mentioned in subsection (3) either –
 - (a) by specifying a longer period in the notification; or 35
 - (b) by subsequently, on one or more occasions, extending the specified period.

- (6) The person notified shall have a shorter period for the doing of those things if a shorter period is agreed between OFCOM and the person notified.

- (7) The person notified shall also have a shorter period if – 40
 - (a) OFCOM have reasonable grounds for believing that the case is a case of repeated contravention;
 - (b) they have determined that, in those circumstances, a shorter period would be appropriate; and

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- (c) the shorter period has been specified in the notification.
- (8) A notification under this section –
- (a) may be given in respect of more than one contravention of section 23; and
 - (b) if it is given in respect of a continuing contravention, may be given in respect of any period during which the contravention has continued. 5
- (9) Where a notification under this section has been given to any person in respect of a particular contravention of section 23, OFCOM may give a further notification in respect of that contravention if, and only if –
- (a) the subsequent notification is in respect of so much of a period during which the contravention in question was continuing as falls after any period to which the earlier notification relates; or 10
 - (b) the earlier notification has been withdrawn without a penalty having been imposed by reference to the notified contravention.
- (10) For the purposes of this section a contravention is a repeated contravention, in relation to any notification with respect to that contravention if – 15
- (a) a previous notification under this section has been given in respect of the same contravention or in respect of another contravention of section 23; and
 - (b) the subsequent notification was given no more than twelve months after the making by OFCOM of a determination for the purposes of section 27(2) or 28(2) that the contravention to which the earlier notification related did occur. 20
- 27 Enforcement notification for contravention of section 23**
- (1) This section applies where – 25
- (a) a person (“the notified provider”) has been given a notification under section 26;
 - (b) OFCOM have allowed the notified provider an opportunity of making representations about the matters notified; and
 - (c) the period allowed for the making of the representations has expired. 30
- (2) OFCOM may give the notified provider an enforcement notification if they are satisfied –
- (a) that he is or has been in contravention, in any of the respects notified, of section 23; and
 - (b) that he has not himself, during the period allowed under section 26, taken all such steps as OFCOM consider appropriate for providing them with the information which he should have provided to them but has not. 35
- (3) An enforcement notification is a notification which imposes a requirement on the notified provider to take all such steps for providing OFCOM with that information as may be specified in the notification. 40
- (4) A decision of OFCOM to give an enforcement notification to any person –
- (a) must be notified to that person, together with the reasons for the decision, no later than a week after it is taken; and
 - (b) must fix a reasonable period for the taking of the steps required by the notification. 45

- (5) It shall be the duty of a person to whom an enforcement notification has been given to comply with it.
- (6) That duty shall be enforceable in civil proceedings by OFCOM for an injunction, for specific performance of a statutory duty under section 45 of the Court of Session Act 1988 (c. 36), or for any other appropriate relief. 5

28 Penalties for contravention of s. 23

- (1) This section applies (in addition to section 27) where –
 - (a) a person (“the notified provider”) has been given a notification under section 26;
 - (b) OFCOM have allowed the notified provider an opportunity of making representations about the matters notified; and 10
 - (c) the period allowed for the making of the representations has expired.
- (2) OFCOM may impose a penalty on the notified provider if he –
 - (a) has been in contravention, in any of the respects notified, of section 23; and 15
 - (b) has not, during the period allowed under section 26, provided OFCOM with all the information which he should have provided for the purposes of section 23 but has not.
- (3) Where a notification under section 26 relates to more than one contravention, a separate penalty may be imposed in respect of each contravention. 20
- (4) Where such a notification relates to a continuing contravention, no more than one penalty may be imposed in respect of the period specified in the notification during which that contravention continued.
- (5) OFCOM may also impose a penalty on the notified provider if he has contravened, or is contravening, a requirement of an enforcement notification given in respect of the notified contravention. 25
- (6) The amount of a penalty imposed under this section is to be such amount not exceeding £10,000 as OFCOM, having regard to the matters mentioned in subsection (7), determine to be –
 - (a) appropriate; and 30
 - (b) proportionate to the matter in respect of which it is imposed.
- (7) Those matters are –
 - (a) any representations made to OFCOM by the notified provider; and
 - (b) any steps taken by him towards complying with his obligations under section 23. 35
- (8) Where OFCOM impose a penalty on a person under this section they shall –
 - (a) within one week of making their decision to impose the penalty, notify that person of that decision and of their reasons for that decision; and
 - (b) in that notification, fix such reasonable period after it is given as the period within which the penalty is to be paid. 40
- (9) A penalty imposed under this section –
 - (a) must be paid to OFCOM; and
 - (b) if not paid within the period fixed by them, is to be recoverable by OFCOM accordingly.

- (10) The Secretary of State may by order amend this section so as to substitute a different maximum penalty for the maximum penalty for the time being specified in subsection (6).

Administrative charges imposed on providers

- 29 Fixing of charges** 5
- (1) Where, at any time in a charging year, a person –
- (a) provides an electronic communications network which is, at that time, subject to administrative charges,
 - (b) provides an electronic communications service of a description which is, at that time, designated for the purposes of section 23, or 10
 - (c) makes available an associated facility of a description which is, at that time, so designated,
- that person shall, in respect of that network, service or facility, pay to OFCOM the administrative charge (if any) that is fixed by OFCOM for that year for networks, services or facilities of the description that applies to the one in question. 15
- (2) The electronic communications networks which, in relation to any time, are subject to administrative charges are –
- (a) every electronic communications network of a description which is, at that time, designated for the purposes of section 23; and 20
 - (b) every electronic communications network which at that time –
 - (i) is not of a description so designated; but
 - (ii) is a network for the purposes of which the electronic communications code has effect by virtue of a direction applying it to the provider of that network. 25
- (3) OFCOM shall not fix the administrative charge in respect of any description of network, service or facility for any charging year unless –
- (a) at the time the charge is fixed there is in force a statement by OFCOM of the principles that OFCOM are proposing to apply in fixing charges under this section for that year; and 30
 - (b) the charge is fixed in accordance with those charging principles.
- (4) Those principles must be such as appear to OFCOM to be likely to secure, on the basis of such estimates of the likely costs as it is practicable for them to make –
- (a) that, on a year by year basis, the aggregate amount of the charges payable to OFCOM is sufficient to meet, but does not exceed, the annual cost to OFCOM of carrying out the functions mentioned in subsection (5); 35
 - (b) that the cost of carrying out those functions is met by the imposition of charges that are objectively justifiable and proportionate to the matters in respect of which they are imposed; 40
 - (c) that the relationship between the meeting of the cost of carrying out those functions and the amounts of the charges is transparent; and
 - (d) that the charges fixed for electronic communications networks that are subject to administrative charges by virtue only of subsection (2)(b) relate only to the functions mentioned in subsection (6)(f) and (j). 45

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- (5) Those functions are the following functions –
- (a) the relevant Part 2 functions, so far as they fall to be carried out in relation to electronic communications networks, electronic communications services or associated facilities; and
 - (b) the function of taking any steps that OFCOM consider it necessary to take –
 - (i) in preparation for the carrying out of any of the functions mentioned in paragraph (a);
 - (ii) for the purpose of facilitating the carrying out of those functions or r otherwise in connection with carrying them out.
- (6) The relevant Part 2 functions are –
- (a) OFCOM’s functions under sections 23 to 28;
 - (b) the setting and enforcement of any conditions of an entitlement to provide an electronic communications network or an electronic communications service, or of an entitlement to make associated facilities available;
 - (c) the supervision, as respects the requirements of sections 23 to 28 and of any such conditions, of communications providers and of persons who make associated facilities available;
 - (d) the monitoring of compliance with those requirements and with any such conditions;
 - (e) the functions conferred on OFCOM by or under section 42;
 - (f) their functions under sections 82 to 95;
 - (g) securing international co-operation in relation to the regulation of electronic communications networks, electronic communications services and associated facilities;
 - (h) securing the harmonisation and standardisation of the regulation of electronic communications networks, electronic communications services and associated facilities;
 - (i) market analysis and any monitoring of the controls operating in the markets for electronic communications networks, electronic communications services and associated facilities;
 - (j) OFCOM’s functions under this section and sections 30 to 33.
- (7) As soon as reasonably practicable after the end of each charging year, OFCOM shall publish a statement setting out, in respect of that year –
- (a) the aggregate amounts of the administrative charges for that year that have been received by OFCOM;
 - (b) the aggregate amount of the administrative charges for that year that remain outstanding and are likely to be paid or recovered; and
 - (c) the cost to OFCOM of carrying out the functions mentioned in subsection (5).
- (8) Any deficit or surplus shown (after applying this subsection for all previous years) by a statement under subsection (7) shall be carried forward and taken into account in determining what is required to satisfy the requirement imposed by virtue of subsection (4)(a) in relation to the following year.
- (9) In this section “charging year” means any period of twelve months ending –
- (a) if no nomination is made under paragraph (b), with 31st March; or
 - (b) with such other date as OFCOM may nominate for the purposes of this section;

and a nomination made for the purposes of paragraph (b) must be made within six months of the coming into force of this section and shall be irrevocable.

30 Supplemental provision about fixing charges

- (1) OFCOM’s power to fix a charge under section 29 –
 - (a) shall be exercised by the publication or giving of such notification as they consider appropriate for bringing the charge to the attention of the persons who, in their opinion, are likely to be affected by it; and
 - (b) shall include power, by setting it out in that notification, to fix the time at which the charge is to become due to OFCOM.
- (2) A charge fixed under section 29 for a charging year in respect of any description of network, service or facility may be fixed in terms providing for a deduction from the charge on a proportionate basis to be made for a part of the year during which the network, service or facility in question is not provided or made available by the person otherwise liable to the charge.
- (3) Such a charge may also be fixed (subject to subsection (4)) so that it is referable, in whole or in part, to the provision or making available of a network, service or facility during a part of the year falling before the fixing of the charge.
- (4) A charge may be fixed so as to be referable to a time before it is fixed to the extent only that both –
 - (a) the imposition of the charge, and
 - (b) the amount of the charge,
 are required by, and consistent with, the statement of charging principles in force at the beginning of the charging year.
- (5) Before making or revising a statement of charging principles, OFCOM must consult such of the persons who, in OFCOM’s opinion, are likely to be affected by those principles as they think fit.
- (6) The making or revision of a statement of charging principles, must be by a notification published in such manner as OFCOM consider appropriate for bringing it to the attention of the persons who, in their opinion, are likely to be affected by it.
- (7) References in this section to a statement of charging principles are references to any statement of the principles that OFCOM are proposing to apply in fixing charges under section 29 for a charging year.
- (8) In this section “charging year” has the same meaning as in section 29.

31 Notification of non-payment of charges

- (1) OFCOM are not entitled to bring any proceedings for the recovery from any person of an administrative charge fixed for any year under section 29 unless they have given that person a notification under this section with respect to the amount they are seeking to recover.
- (2) Where OFCOM determine that there are reasonable grounds for believing that a person is in contravention (whether in respect of the whole or a part of a charge) of a requirement to pay such an administrative charge, they may give him a notification under this section.
- (3) A notification under this section is one which –

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- (a) sets out the determination made by OFCOM; and
 - (b) specifies the period during which the person notified has an opportunity of doing the things specified in subsection (4).
 - (4) Those things are –
 - (a) making representations about the matters notified; and 5
 - (b) paying the unpaid charge or, as the case may be, the amount outstanding.
 - (5) Subject to subsections (6) to (8), the period for the doing of those things that is specified in a notification under this section must be the period of one month beginning with the day after the day on which the notification was given. 10
 - (6) OFCOM may, if they think fit, allow a longer period for the doing of the things mentioned in subsection (4) either –
 - (a) by specifying a longer period in the notification; or
 - (b) by subsequently, on one or more occasions, extending the specified period. 15
 - (7) The person notified shall have a shorter period for the doing of those things if a shorter period is agreed between OFCOM and the person notified.
 - (8) The person notified shall also have a shorter period if –
 - (a) OFCOM have reasonable grounds for believing that the case is a case of repeated contravention; 20
 - (b) they have determined that, in those circumstances, a shorter period would be appropriate; and
 - (c) the shorter period has been specified in the notification.
 - (9) A notification under this section –
 - (a) may be given in respect of contraventions of more than one requirement to pay an administrative charge; and 25
 - (b) if it is given in respect of a continuing contravention, may be given in respect of any period during which the contravention has continued.
 - (10) Where a notification under this section has been given to a person in respect of a particular amount outstanding, OFCOM may give a further notification in respect of that amount if, and only if –
 - (a) the subsequent notification is in respect of so much of a period during which that amount was outstanding as falls after any period to which the earlier notification relates; or
 - (b) the earlier notification has been withdrawn without a penalty having been imposed in respect of the matters notified. 30
 - (11) For the purposes of this section a contravention is a repeated contravention, in relation to any notification with respect to that contravention if –
 - (a) a previous notification under this section has been given in respect of the same contravention or in respect of another contravention of a requirement to pay an administrative charge; and 40
 - (b) the subsequent notification was given no more than twelve months after the making by OFCOM of a determination for the purposes of section 32(2) that the contravention to which the earlier notification related did occur. 45

32 Penalties for non-payment of charges

- (1) This section applies where –
 - (a) a person (“the notified provider”) has been given a notification under section 31;
 - (b) OFCOM have allowed the notified provider an opportunity of making representations about the matters notified; and
 - (c) the period allowed for the making of the representations has expired.
- (2) OFCOM may impose a penalty on the notified provider if –
 - (a) he has been in contravention, in any of the respects notified, of any requirement to pay an administrative charge fixed for any year under section 29; and
 - (b) he has not, during the period allowed under section 31, paid the whole of the notified amount outstanding.
- (3) Where a notification under section 31 relates to more than one contravention, a separate penalty may be imposed in respect of each contravention.
- (4) Where such a notification relates to a continuing contravention, no more than one penalty may be imposed in respect of the period specified in the notification during which that contravention continued.
- (5) The amount of a penalty imposed under this section is to be such amount, not exceeding twice the amount of the charge fixed for the relevant year, as OFCOM, having regard to the matters mentioned in subsection (6), may determine to be –
 - (a) appropriate; and
 - (b) proportionate to the matter in respect of which it is imposed.
- (6) Those matters are –
 - (a) any representations made to OFCOM by the notified provider; and
 - (b) any steps taken by him towards paying the amounts that he was notified under section 31 were outstanding
- (7) Where OFCOM impose a penalty on a person under this section they shall –
 - (a) within one week of making their decision to impose the penalty, notify that person of that decision and of their reasons for that decision; and
 - (b) in that notification, fix a reasonable period after it is given as the period within which the penalty is to be paid.
- (8) A penalty imposed under this section –
 - (a) must be paid to OFCOM; and
 - (b) if not paid within the period fixed by them, is to be recoverable by OFCOM accordingly.
- (9) The Secretary of State may by order amend this section so as to substitute a different multiplier for the multiplier for the time being specified in subsection (5).
- (10) In this section “the relevant year”, in relation to a contravention of any requirement to pay the whole or any part of the administrative charge fixed for any year, means that year.
- (11) The provisions of this section do not affect OFCOM’s power, apart from those provisions, to bring proceedings (whether before or after the imposition of a

penalty under this section) for the recovery of the whole or part of any amount due to them under section 29(1).

33 Suspending or restricting entitlement for non-payment

- (1) OFCOM may give a direction to a person under this section if they are satisfied – 5
 - (a) that that person (“the contravening provider”) has been in serious and repeated contravention of requirements to pay administrative charges fixed under section 29 (whether in respect of the whole or any part of the charges);
 - (b) that the bringing of proceedings for the recovery of the amounts outstanding has failed to secure complete compliance by the contravening provider with the requirements to pay the charges fixed in his case, or has no reasonable prospect of securing such compliance; 10
 - (c) that the imposition of penalties under section 32 has failed to secure such compliance; and 15
 - (d) that the giving of the direction is appropriate and proportionate to the seriousness (when repeated as they have been) of the contraventions.
- (2) A direction under this section is – 20
 - (a) a direction that the entitlement of the contravening provider to provide electronic communications networks or electronic communications services, or to make associated facilities available, is suspended (either generally or in relation to particular networks, services or facilities); or
 - (b) a direction that that entitlement is restricted in the respects set out in the direction.
- (3) A direction under this section – 25
 - (a) must specify the networks, services and facilities to which it relates; and
 - (b) except so far as it otherwise provides, shall take effect for an indefinite period beginning with the time at which it is notified to the person to whom it is given.
- (4) A direction under this section – 30
 - (a) in providing for the effect of a suspension or restriction to be postponed may provide for it to take effect only at a time determined by or in accordance with the terms of the direction; and
 - (b) in connection with the suspension or restriction contained in the direction or with the postponement of its effect, may impose such conditions on the contravening provider as appear to OFCOM to be appropriate for the purpose of protecting that provider’s customers. 35
- (5) Those conditions may include a condition requiring the making of payments by way of compensation for loss suffered by the contravening provider’s customers as a result of the direction. 40
- (6) Where OFCOM give a direction under this section to any person, they shall, as soon as practicable after doing so, provide that person with an opportunity of – 45
 - (a) making representations about the effect of the direction; and
 - (b) proposing steps for remedying the situation.

- (7) If OFCOM consider it appropriate to do so (whether in consequence of any representations or proposals made to them under subsection (6) or otherwise), they may revoke a direction under this section –
 - (a) with effect from such time as they may direct;
 - (b) subject to compliance with such requirements as they may specify; and
 - (c) to such extent and in relation to such networks, services or facilities, or parts of any network, service or facility as they may determine.

34 Enforcement of directions under s. 33

- (1) A person is guilty of an offence if he provides an electronic communications network or electronic communications service, or makes available any associated facility –
 - (a) while his entitlement to do so is suspended by a direction under section 33; or
 - (b) in contravention of any restriction contained in such a direction.
- (2) A person guilty of an offence under subsection (1) shall be liable –
 - (a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to a fine.
- (3) The duty of a person to comply with a condition of a direction under section 33 shall be a duty owed to every person who may be affected by a contravention of the condition.
- (4) Where a duty is owed by virtue of subsection (3) to any person –
 - (a) any breach of the duty that causes that person to sustain loss or damage, and
 - (b) any act which by inducing a breach of the duty or interfering with its performance causes that person to sustain loss or damage and which is done wholly or partly for achieving that result,
 shall be actionable at the suit or instance of that person.
- (5) In any proceedings brought against any person by virtue of subsection (4)(a) it shall be a defence for that person to show that he took all reasonable steps and exercised all due diligence to avoid contravening the condition in question
- (6) Sections 74 to 78 apply in relation to a contravention of conditions imposed by a direction under section 33 as they apply in relation to a contravention of conditions set under section 35.

Conditions of entitlement to provide network or service etc. 35

35 Power of OFCOM to set conditions

- (1) Conditions which bind the persons to whom they are applied may be set by OFCOM in relation to matters connected with any or all of the following –
 - (a) the provision of electronic communications networks;
 - (b) the provision of electronic communications services;
 - (c) the making available of associated facilities.
- (2) A condition set by OFCOM under this section must be either –
 - (a) a general condition; or

-
- (b) a condition of one of the following descriptions –
 - (i) a universal service condition;
 - (ii) an access-related condition;
 - (iii) a privileged supplier condition;
 - (iv) a significant market power condition (an “SMP condition”). 5
 - (3) A general condition is a condition which –
 - (a) contains only provisions authorised or required by section 38, 39, 43, 44 or 49; and
 - (b) is applied generally to every person providing an electronic communications network or electronic communications service of a particular description. 10
 - (4) A universal service condition is a condition which contains only provisions authorised or required by section 52 and is applied to a particular person who –
 - (a) except in the case of a condition relating to matters mentioned in subsection (3) of section 51, must be a communications provider designated in accordance with regulations under that section; and 15
 - (b) in that excepted case, must be a person so designated (whether for the purposes only of conditions so relating or for those purposes and others) but need not be a communications provider. 20
 - (5) An access-related condition is a condition which contains only provisions authorised by section 58 and is applied to a particular person who –
 - (a) in the case of a condition falling within section 59(1), may be any person whatever; and
 - (b) in any other case, must be a person who provides an electronic communications network or makes associated facilities available. 25
 - (6) A privileged supplier condition is a condition which contains the provision required by section 62 and is applied either –
 - (a) to a particular person who provides a public electronic communications network or a public electronic communications service; or 30
 - (b) to all persons who provide such networks or services or are of a particular description of such persons.
 - (7) An SMP condition is a condition which –
 - (a) is applied to a particular person falling within subsection (8) who is a communications provider or who makes associated facilities available; and 35
 - (b) contains only provisions which are authorised or required by one or more of sections 68 to 73 or, in the case of a person falling within subsection (8)(b), correspond to any provision authorised or required under any of sections 68 to 70. 40
 - (8) A person falls within this subsection if –
 - (a) he is a person whom OFCOM have determined to be a person having significant market power in a specific market for electronic communications networks, electronic communications services or associated facilities; or 45
 - (b) it appears to OFCOM that he is a person on whom it is necessary, for the purpose of securing compliance with an international obligation of

the United Kingdom, to impose a condition containing provision that corresponds to provision which, in the case of a person falling within paragraph (a), must be made (or may be made) under any of sections 68 to 70.

- (9) The power to set a condition under this section making any provision authorised or required by this Chapter includes each of the following –
 - (a) power to impose a requirement on the person or persons to whom the condition is applied to comply with such directions with respect to the matters to which the condition may relate as may be given from time to time by a person specified in the condition; 10
 - (b) power to impose an obligation with respect to those matters that is framed by reference to, or is conditional upon, the giving of a consent, the giving of an approval or the making of a recommendation by any person; 15
 - (c) power, in making any provision with respect to those matters, to require or authorise the determination of any matter in accordance with provision made by the conditions; 15
 - (d) power to confer a discretion exercisable from time to time by a person specified or determined in accordance with provision so made;
 - (e) power (subject to section 38(2)) to set different conditions for different cases (including different conditions in relation to different parts of the United Kingdom); and 20
 - (f) power to revoke or modify the conditions for the time being in force.
- (10) The directions that may be authorised by virtue of subsection (9) do not include directions withdrawing, suspending or restricting a person’s entitlement –
 - (a) to provide, in whole or in part, any electronic communications network or electronic communications service; or 25
 - (b) to make available, in whole or in part, any associated facilities.

36 Setting etc. of conditions generally

- (1) Subject to the following provisions of this Chapter –
 - (a) the means by which conditions are to be set or modified under section 35 is the publication of a notification setting out the conditions or modifications; and
 - (b) the means by which such a condition is to be revoked is the publication of a notification stating that the condition is revoked. 35
- (2) Before setting conditions under section 35, or modifying or revoking any conditions so set, OFCOM must publish a notification –
 - (a) stating that they are proposing to set, modify or revoke the conditions that are specified in the notification;
 - (b) setting out the effect of those conditions, modifications or revocations; 40
 - (c) giving their reasons for making the proposal; and
 - (d) specifying the period within which representations may be made to OFCOM about their proposal.
- (3) That period must be one ending not less than one month after the publication of the notification. 45
- (4) In the case of a notification under subsection (2) with respect to an SMP condition the requirements of sections 64 to 67 must also be complied with.

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- (5) OFCOM shall be entitled to give effect, with or without modifications, to any proposal with respect to which they have published a notification under subsection (2) only if –
- (a) they have considered every representation about the proposal that is made to them within the period specified in the notification; and 5
 - (b) they have had regard to all such international obligations of the United Kingdom (if any) as have been notified to them for the purposes of this paragraph by the Secretary of State.
- (6) OFCOM shall send a copy of every notification published under subsection (1) or (2) to the Secretary of State. 10
- (7) OFCOM shall send a copy of every notification published under subsection (1) with respect to an SMP condition to the European Commission.
- (8) OFCOM shall send a copy of every notification published under subsection (2) with respect to a condition which –
- (a) is an access-related condition falling within section 58(2) or (4) or an SMP condition, and 15
 - (b) in OFCOM’s opinion would affect trade between member States, to the European Commission and to the regulatory authorities of every other member State.
- (9) OFCOM shall, in every other case in which it appears to them appropriate to do so, send a copy of a notification published under subsection (1) or (2) – 20
- (a) to the European Commission; and
 - (b) to such of the regulatory authorities of the other member States as OFCOM think fit.
- (10) The publication of a notification under this section must be in such manner as appears to OFCOM to be appropriate for bringing the contents of the notification – 25
- (a) in the case of a notification setting general conditions, to the attention of such persons as OFCOM consider appropriate; and
 - (b) in any other case, to the attention of the persons who, in OFCOM’s opinion, are likely to be affected by the contents of the notification. 30
- (11) Nothing in the following provisions of this Chapter imposing a duty on OFCOM to set or modify a condition shall be taken as dispensing with any of the requirements of this section.
- 37 Tests for setting or modifying certain conditions 35**
- (1) OFCOM shall not, in exercise or performance of any power or duty under this Chapter –
- (a) set any condition under section 35, or
 - (b) modify such a condition,
- unless they are satisfied that the condition or, as the case may be, the modification satisfies the test in subsection (2). 40
- (2) That test is that the condition or modification is –
- (a) objectively justifiable in relation to the networks, services or facilities to which it relates;
 - (b) not such as to discriminate unduly against particular persons or against a particular description of persons; 45

- (c) proportionate to what the condition or modification is intended to achieve; and
- (d) in relation to what it is intended to achieve, transparent.

General conditions: subject matter

38	Matters to which general conditions may relate	5
(1)	Subject to sections 39 to 49, the only conditions that may be set under section 35 as general conditions are conditions falling within one or more of the following paragraphs –	
(a)	conditions making such provision as OFCOM consider appropriate for protecting the interests of the end-users of public electronic communications services;	10
(b)	conditions making such provision as OFCOM consider appropriate for securing service interoperability and for securing, or otherwise relating to, network access;	
(c)	conditions making such provision as OFCOM consider appropriate for securing the proper and effective functioning of public electronic communications networks;	15
(d)	conditions about the broadcasting or other transmission by means of an electronic communications network, or as part of an electronic communications service, of a television programme containing matters which are harmful to persons under the age of eighteen;	20
(e)	conditions for giving effect to determinations or regulations made under section 56;	
(f)	conditions requiring or regulating the provision, availability and use, in the event of a disaster, of electronic communications networks, electronic communications services and associated facilities;	25
(g)	conditions making such provision as OFCOM consider appropriate for securing the protection of public health by the prevention or avoidance of the exposure of individuals to electro-magnetic fields created in connection with the operation of electronic communications networks;	30
(h)	conditions requiring compliance with relevant international standards.	
(2)	The power to set general conditions in relation to any description of electronic communications network or electronic communications service shall not include power –	
(a)	to set conditions that are made applicable according to the identity of the provider of a network or service; or	35
(b)	to set conditions that differ according to the identity of the provider of the networks or services to which they relate.	
(3)	The power to set general conditions falling within subsection (1)(b) does not include power to set conditions containing provision which under –	40
(a)	section 58, or	
(b)	any of sections 68 to 73,	
	must be or may be included, in a case in which it appears to OFCOM to be appropriate to do so, in an access-related condition or SMP condition.	
(4)	The conditions falling within subsection (1)(c) include conditions making such provision as OFCOM consider appropriate for the purpose, in accordance with	45

Community obligations, of preventing or restricting electro-magnetic interference –

- (a) with the provision of an electronic communications network or electronic communications service; or
 - (b) with, or with the receipt of, anything conveyed or provided by means of such a network or service. 5
- (5) In this section –
- “disaster” includes –
 - (a) a major accident; and
 - (b) any incident of contamination involving toxic or radioactive substances that affects the general public; 10
 - “electro-magnetic interference” means interference by means of the emission or reflection of electro-magnetic energy in the course of, or in connection with, the provision any electronic communications network or electronic communications service. 15

General conditions: customer interests

39 Conditions relating to customer interests

- (1) It shall be the duty of OFCOM to set such general conditions (if any) as they consider appropriate for securing that public communications providers, or such descriptions of them as OFCOM consider appropriate, establish and maintain procedures, standards and policies with respect to the matters mentioned in subsection (2). 20
- (2) Those matters are –
 - (a) the handling of complaints made to public communications providers by any of their domestic and small business customers; 25
 - (b) the resolution of disputes between such providers and any of their domestic and small business customers;
 - (c) the provision of remedies and redress in respect of matters that form the subject of such complaints or disputes;
 - (d) the information about service standards and about the rights of domestic and small business customers that is to be made available to those customers by public communications providers; 30
 - (e) any other matter appearing to OFCOM to be necessary for securing effective protection for the domestic and small business customers of such providers. 35
- (3) In setting any conditions under subsection (1) it shall be the duty of OFCOM to secure, so far as they consider appropriate –
 - (a) that the procedures established and maintained with respect to the handling of complaints and the resolution of disputes are easy to use, transparent and effective; 40
 - (b) that domestic and small business customers have the right to use those procedures free of charge; and
 - (c) that where public communications providers are in contravention of any condition set in accordance with the preceding provisions of this section, they follow such procedures as may be required by the general conditions. 45

- (4) Subject to section 42, OFCOM’s duties under subsections (1) and (3) so far as relating to procedures with respect to the handling of complaints are to be performed, to such extent as they consider appropriate, by the setting of general conditions requiring public communications providers to establish and maintain procedures that conform with a code of practice which—
 - (a) is for the time being approved by OFCOM for the purposes of this subsection; and
 - (b) is applicable to the providers to whom the conditions apply.
- (5) Subject to section 42, OFCOM’s duties under subsections (1) and (3) so far as relating to procedures for the resolution of disputes are to be performed, to such extent as they consider appropriate, by the setting of general conditions requiring public communications providers—
 - (a) to establish and maintain procedures for resolving disputes; and
 - (b) to secure that those procedures are and continue to be approved by OFCOM.
- (6) In this section “domestic and small business customer”, in relation to a communications provider, means any customer of that provider who is neither—
 - (a) himself a communications provider; nor
 - (b) a person who is such a customer in respect of an undertaking carried on by him for which more than fifty individuals work (whether as employees or volunteers or otherwise).

40 Approval of codes of practice for the purposes of s. 39

- (1) Where a code of practice is submitted to OFCOM for approval for the purposes of section 39(4), they shall approve that code if and only if, in their opinion, it makes all such provision as they consider necessary in relation to the matters dealt with in the code for the protection of the domestic and small business customers of the public communications providers to whom the code applies.
- (2) It shall be the duty of OFCOM to keep under review the codes of practice for the time being approved by them.
- (3) OFCOM may at any time, by a notification given or published in such manner as they consider appropriate—
 - (a) withdraw their approval of any code of practice approved; or
 - (b) give notice that the withdrawal of their approval will take effect from such time as may be specified in the notification unless such modifications of the code as are specified in the notification are made before that time.
- (4) In considering—
 - (a) whether to approve a code of practice for the purposes of section 39(4), or
 - (b) whether or in what manner to exercise their powers under subsections (1) to (3) of this section,
 OFCOM shall have regard to the matters mentioned in subsection (5).
- (5) Those matters are—
 - (a) the need to secure that customers are able readily to comprehend the procedures that are provided for by the codes of practice;

- (b) the need to secure that there is consistency between the different codes for the time being approved by OFCOM; and
 - (c) the need to secure that the number of different codes so approved is kept to a minimum.
- (6) In this section— 5
 “approved” means approved for the purposes of section 39(4); and
 “domestic and small business customer” has the same meaning as in section 39.

41 Approval of dispute procedures

- (1) Before giving their approval to any dispute procedures, OFCOM must consult the Secretary of State. 10
- (2) OFCOM shall not give their approval to any dispute procedures unless they are satisfied that the arrangements under which the procedures have effect—
- (a) are administered by a body corporate that is for practical purposes independent (so far as decisions in relation to disputes are concerned) of both OFCOM and the communications providers to whom the arrangements apply; 15
 - (b) give effect to procedures that are easy to use, transparent and effective;
 - (c) give, in the case of every communications provider to whom the arrangements apply, a right to each of his domestic and small business customers to use the procedures free of charge; 20
 - (d) ensure that all information necessary for giving effect to the procedures is obtained;
 - (e) ensure that disputes are effectively investigated;
 - (f) include provision conferring power to make awards of appropriate compensation; and 25
 - (g) are such as to enable awards of compensation to be properly enforced.
- (3) OFCOM’s approval of any dispute procedures may be given subject to such conditions (including conditions as to the provision of information to OFCOM) as they may think fit. 30
- (4) It shall be the duty of OFCOM to keep under review any dispute procedures which for the time being have their approval.
- (5) OFCOM may at any time, by a notification given or published in such manner as they consider appropriate—
- (a) modify the conditions of their approval of any dispute procedures or withdraw such an approval; or 35
 - (b) give notice that the modification of those conditions, or the withdrawal of such an approval, will take effect from such time as may be specified in the notification unless the procedures (or the arrangements under which they have effect) are modified before that time in the manner required by the notification. 40
- (6) In considering—
- (a) whether to give their approval to any dispute procedures, or
 - (b) whether or in what manner to exercise their powers under subsections (3) to (5), 45
- OFCOM shall have regard to the matters mentioned in subsection (7).

- (7) Those matters are –
 - (a) the need to secure that customers are able readily to comprehend any dispute procedures having OFCOM’s approval;
 - (b) the need to secure that there is consistency between the different procedures which for the time being have OFCOM’s approval; and 5
 - (c) the need to secure that the number of different sets of procedures with OFCOM’s approval is kept to a minimum.
- (8) In this section –
 - (a) references to OFCOM’s approval are references to OFCOM’s approval for the purposes of subsection (5) of section 39; and 10
 - (b) references to dispute procedures are references to any such procedures as may be approved for the purposes of a condition under that subsection.

42 Orders by OFCOM in the absence of conditions under s. 39

- (1) OFCOM may make an order under this section if, at any time, they consider in relation to any one or more public communications providers – 15
 - (a) that it is not practicable, or at least not appropriate, for OFCOM’s duties under subsections (1) and (3) of section 39 to be performed in a particular respect by the setting of general conditions; and
 - (b) that it is necessary to make the order for the purpose – 20
 - (i) of securing the necessary protection for the customers of that provider or of those providers; or
 - (ii) of securing compliance with a Community obligation.
- (2) An order under this section may make such of the following provisions as OFCOM think fit – 25
 - (a) provision imposing requirements with respect to the complaints and disputes mentioned in section 39(2);
 - (b) provision for the enforcement of those requirements;
 - (c) provision making such other arrangements for the purposes of those requirements as they think fit. 30
- (3) The power to make an order under this section shall include, in particular –
 - (a) power to establish a body corporate with the capacity to make its own rules and to establish its own procedures;
 - (b) power to determine the jurisdiction of a body established by such an order or, for the purposes of the order, of any other person; 35
 - (c) power to confer jurisdiction with respect to any matter on OFCOM themselves;
 - (d) power to provide for a person on whom jurisdiction is conferred by the arrangements to make awards of compensation, to direct the reimbursement of costs or expenses, or to do both; 40
 - (e) power to provide for such a person to enforce, or to participate in the enforcement of, any awards or directions made under such an order; and
 - (f) power to make such other provision as OFCOM think fit for the enforcement of such awards and directions. 45

- (4) An order under this section may require such public communications providers as may be determined by or under the order to make payments to OFCOM in respect of expenditure incurred by OFCOM in connection with—
 - (a) the establishment and maintenance, in accordance with such an order, of any body corporate or procedure; or 5
 - (b) the making of any other arrangements for the purposes of the requirements of such an order.
- (5) Before making an order under this section, OFCOM must consult the Secretary of State.
- (6) Section 255 applies to the power of OFCOM to make an order under under this section. 10
- (7) A statutory instrument containing an order made by OFCOM under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

General conditions: telephone numbers 15

43 The national telephone numbering plan

- (1) It shall be the duty of OFCOM to publish a document (to be known as “the National Telephone Numbering Plan”) setting out—
 - (a) the numbers that they have determined to be available for allocation by them as telephone numbers; 20
 - (b) such restrictions as they consider appropriate on the adoption of numbers available for allocation in accordance with the plan; and
 - (c) such restrictions as they consider appropriate on the other uses to which numbers available for allocation in accordance with the plan may be put. 25
- (2) It shall be OFCOM’s duty —
 - (a) from time to time to review the National Telephone Numbering Plan; and
 - (b) to make any revisions of that plan that they think fit in consequence of any such review. 30
- (3) General conditions may impose such requirements as OFCOM consider appropriate for securing that every end-user of a public electronic communications service is able, by means of that service—
 - (a) to make calls or otherwise transmit electronic communications to every normal telephone number; and 35
 - (b) to receive every call or other electronic communication that is made or transmitted to him using such a service from apparatus identified by a normal telephone number.
- (4) A normal telephone number is one which has been —
 - (a) made available, in accordance with the National Telephone Numbering Plan, as a number to be used for the purpose of identifying the destination for, or the recipient of, electronic communications; and 40
 - (b) adopted by a communication provider as a number to be used for that purpose.

- (5) The publication of the National Telephone Numbering Plan, and of any revision of that plan, must be in such manner as appears to OFCOM to be appropriate for bringing the contents of the Plan to the attention of the persons who, in their opinion, are likely to be affected by it.
- (6) In this Chapter references to a telephone number are (subject to subsection (8)) references to any number that is used (whether or not in connection with telephony) for any one or more of the following purposes—
 - (a) identifying the destination for, or recipient of, an electronic communication;
 - (b) identifying the origin, or sender, of an electronic communication;
 - (c) identifying the route for any electronic communication;
 - (d) identifying the source from which any electronic communication or electronic communications service may be obtained or accessed;
 - (e) selecting the service that is to be obtained or accessed, or any required elements or characteristics of that service; or
 - (f) identifying the communications provider by means of whose network or service any electronic communication is to be transmitted, or treated as transmitted.
- (7) In this Chapter references to the adoption of a telephone number by a communications provider are references to his doing any of the following (whether in relation to a number allocated by OFCOM to that provider or in relation to a number allocated directly to a person who is or is to become a customer of that provider)—
 - (a) allocating or transferring that number to a particular customer or piece of apparatus;
 - (b) using that number for identifying any service or route used by that provider or by any of his customers;
 - (c) using that number for identifying a communication as one to be transmitted by that provider;
 - (d) designating that number for use in selecting a service or the required elements or characteristics of a service;
 - (e) authorising the use of that number by others for any of the purposes mentioned in subsection (6).
- (8) The Secretary of State may by order exclude such numbers as may be described in the order from the numbers that are to be treated as telephone numbers for the purposes of this Chapter.
- (9) References in this section to the allocation of a number are references to its allocation for the purposes of any general conditions under section 44.
- (10) In this section
 - “electronic communication” means a communication for conveyance by means of an electronic communications network; and
 - “number” includes data of any description.

44 Allocation and adoption of telephone numbers

- (1) General conditions may include conditions which—
 - (a) prohibit the adoption of telephone numbers by a communications provider except in cases where the numbers have been allocated by

-
- OFCOM (either to that provider or directly to a person who is or becomes a customer of that provider);
- (b) regulate the use by a communications provider, for the purpose of providing an electronic communications network or electronic communications service, of telephone numbers not allocated to that provider; 5
 - (c) impose on the adoption of telephone numbers by a communications provider, and on other practices by communications providers in relation to telephone numbers allocated to them, such restrictions as may be provided for by the conditions; 10
 - (d) impose such requirements in connection with the adoption of telephone numbers on a provider making an adoption as may be provided for by the conditions;
 - (e) require an allocation of particular telephone numbers to be transferred from one communications provider to another in the circumstances provided for in the conditions; 15
 - (f) require payments of such amounts as may be determined by OFCOM to be made to them by a person in respect of the allocation to him of telephone numbers;
 - (g) require payments of such amounts as may be determined by OFCOM to be made to them by any person in respect of transfers of allocations from one person to another; and 20
 - (h) require communications providers to secure compliance with such rules relating to the use of telephone numbers by their customers as OFCOM may set out in general conditions or determine in accordance with provision made by the general conditions. 25
- (2) General conditions may also –
- (a) provide for the procedure to be followed on the making of applications to OFCOM for the allocation of telephone numbers;
 - (b) provide for the information that must accompany such applications and for the handling of such applications; 30
 - (c) provide a procedure for telephone numbers to be reserved pending the making and disposal of an application for their allocation;
 - (d) provide for the procedure to be followed on the making of applications for telephone numbers to be reserved, and for the handling of such applications; 35
 - (e) regulate the procedures to be followed, the system to be applied and the charges to be imposed for the purposes of, or in connection with, the adoption by a communications provider of any telephone numbers allocated to that provider; 40
 - (f) regulate the procedures to be followed, the system to be applied and the charges to be imposed for the purposes of, or in connection with, the transfer of an allocation from one person to another.
- (3) The conditions that may be set under subsection (1)(d) include conditions imposing requirements with respect to the provision of information for purposes connected with the compilation of directories and the provision of directory enquiry services. 45
- (4) The procedure to be followed on the making of an application for the allocation of numbers that are available for allocation in accordance with the National Telephone Numbering Plan must require OFCOM's determination on the application to be made – 50

- (a) in the case of an application made in response to an invitation in accordance with subsection (5), before the end of six weeks after the date on which the application is received; and
 - (b) in any other case, before the end of three weeks after that date
- (5) Where OFCOM are proposing to allocate any telephone numbers, they may – 5
 - (a) invite persons to indicate the payments each would be willing to make to OFCOM if allocated the numbers; and
 - (b) make the allocation according to the amounts indicated.
- (6) General conditions providing for payments to be made to OFCOM in respect of anything mentioned in subsection (1)(f) or (g) – 10
 - (a) must set out the principles according to which the amounts of the payments are to be determined;
 - (b) may provide for the payments to consist of a lump sum in respect of a particular allocation or transfer or of sums payable periodically while an allocation remains in force, or of both; 15
 - (c) may provide for the amounts to be determined by reference to –
 - (i) any indication according to which the allocation has been made as mentioned in subsection (5); or
 - (ii) any such other factors, in addition to the costs incurred by OFCOM in connection with the carrying out of their functions by virtue of section 43 and this section, as OFCOM may think fit. 20
- (7) General conditions making such provision as is mentioned in subsection (1) may –
 - (a) make modifications from time to time of, or of the method of determining, the amounts of any periodic payments falling to be made by virtue of such conditions; and 25
 - (b) make different provision in relation to different descriptions of communications provider and different descriptions of telephone number.
- (8) Nothing in subsection (7) shall authorise the modification, after it has been fixed, of the amount of any periodic payment fixed in accordance with any arrangements made in relation to numbers allocated as mentioned in subsection (5)(b). 30
- (9) Payments that are required to be made to OFCOM in respect of anything mentioned in subsection (1)(f) or (g) – 35
 - (a) must be paid to them as soon as they become due in accordance with the conditions imposing the obligation to pay; and
 - (b) if not so paid, are to be recoverable by OFCOM accordingly.

45 Telephone numbering conditions binding non-providers

- (1) OFCOM may set conditions relating to – 40
 - (a) the allocation of telephone numbers to persons who are not communications providers;
 - (b) the use of telephone numbers by such persons.
- (2) The conditions that may be set under this section include conditions imposing obligations corresponding to any of the obligations that may be imposed on communications providers by general conditions making provision in connection with the allocation or use of telephone numbers. 45

- (3) Sections 36 and 37 are to apply in relation to the setting of conditions under this section and in relation to the modification and revocation of those conditions as they apply in relation to the setting, modification and revocation of general conditions.
- (4) It shall be the duty of a person who – 5
 (a) is not a communications provider, but
 (b) applies for the allocation of a telephone number, or is allocated such a number,
 to comply with any conditions set under this section.
- (5) The duty imposed by subsection (4) shall be enforceable by OFCOM in civil proceedings for any appropriate relief. 10
- (6) Subsection (5) does not apply in the case of a person against whom the obligations contained in the condition in question are enforceable by virtue of his having become a communications provider as obligations imposed by general conditions. 15

46 Withdrawal of telephone number allocations

- (1) Subject to the following provisions of this section, where OFCOM have allocated any telephone numbers to any person, for the purposes of any numbering conditions, they may withdraw that allocation if, and only if, the case is one in which the withdrawal of an allocation is authorised by this section. 20
- (2) The withdrawal of an allocation is authorised (subject to section 47) if –
 (a) the person to whom the allocation was made consents;
 (b) the withdrawal is made for the purposes of a transfer of allocation required by any numbering conditions; 25
 (c) the withdrawal is made for the purposes of a numbering reorganisation applicable to a particular series of telephone numbers;
 (d) the allocated numbers are numbers that have not been adopted during such period after their allocation as may be specified in the numbering conditions; or 30
 (e) the allocated numbers are comprised in a series of numbers which have not to any significant extent been adopted during such period as may be so specified.
- (3) A withdrawal of an allocation is also authorised where –
 (a) there have been serious and repeated contraventions, by the person to whom the allocation was made, of the numbering conditions; and 35
 (b) it appears to OFCOM that the taking of other steps in respect of the contraventions is likely to prove ineffective for securing future compliance.
- (4) A withdrawal of an allocation is also authorised where – 40
 (a) the person to whom the allocation was made is not a communications provider; and
 (b) it appears to OFCOM that contraventions by that person of numbering conditions makes the withdrawal of the allocation appropriate.
- (5) Where OFCOM are proposing to withdraw an allocation in exercise of the power conferred by virtue of subsection (2)(d) or (e) OFCOM shall – 45

- (a) give a notification of their proposal;
 - (b) consider any representations made to them about the proposal within the period of one month following the day on which the notification is given; and
 - (c) ensure that the withdrawal (if OFCOM decide to proceed with it after considering those representations) does not take effect until the end of the three months beginning with the end of the period mentioned in paragraph (b). 5
- (6) A notification for the purposes of subsection (5) must be given in such manner as OFCOM consider appropriate for bringing it to the attention of – 10
 - (a) the person to whom the numbers to which the proposed withdrawal relates are for the time being allocated;
 - (b) every person appearing to OFCOM to be a person to whom communications are or may be transmitted using one of those numbers for identifying the destination or route; 15
 - (c) every person who uses any of those numbers for obtaining access to services or for communication; and
 - (d) every other person who, in OFCOM’s opinion, is likely to be affected by the proposal.
- (7) For the purposes of this section there have, in any person’s case, been repeated contraventions of the numbering conditions if – 20
 - (a) more than one notification under section 74 has been given to that person in respect of one or more contraventions of the same or different numbering conditions; and
 - (b) the latest of those notifications was given no more than twelve months after the making by OFCOM of a determination for the purposes of section 75(2) or 76(2) that the contravention to which the earliest notification related did occur. 25
- (8) In this section “numbering conditions” means conditions which are – 30
 - (a) general conditions the making of which is authorised by section 44; or
 - (b) conditions set under section 45.

47 Numbering re-organisations

- (1) This section applies to the withdrawal of an allocation for the purposes of a numbering reorganisation that is applicable to a particular series of telephone numbers. 35
- (2) The allocation is to be withdrawn only if the reorganisation, so far as it relates to numbers of any description, is not such as to discriminate unduly –
 - (a) against particular communications providers;
 - (b) against particular users of the allocated numbers; or
 - (c) against a particular description of such providers or users. 40
- (3) The allocation must not be withdrawn if the reorganisation fails to provide for withdrawn allocations to be replaced by allocations of telephone numbers so nearly resembling the numbers to which the withdrawal relates as the purpose of the reorganisation allows.
- (4) Where a replacement allocation is made for the purposes of the re-organisation – 45

- (a) no payment is to be made to OFCOM in respect of the making of the replacement allocation; but
 - (b) subsection (5) is to apply.
- (5) Where this subsection applies –
 - (a) a provision for the making of periodic payments in respect of the withdrawn allocation is to be treated, to the extent that OFCOM determine that it should, as a provision requiring the making of periodic payments in respect of the replacement allocation; and 5
 - (b) OFCOM may, if they think fit, make such repayments or adjustments of any provision for payment as appear to them to be appropriate in consequence of differences between – 10
 - (i) the numbers to which the withdrawn allocation relates; and
 - (ii) the numbers to which the replacement allocation relates.

48 General duty as to telephone numbering functions

- (1) It shall be the duty of OFCOM, in the carrying out of their functions under sections 43 to 47 – 15
 - (a) to secure that what appears to them to be the best use is made of the numbers that are appropriate for use as telephone numbers; and
 - (b) to encourage efficiency and innovation for that purpose.
- (2) It shall also be the duty of OFCOM, in carrying out those functions, to secure that there is no undue discrimination by communications providers against other providers in relation to the adoption of telephone numbers for purposes connected with the use by one communications provider, or his customers, of any electronic communications network or electronic communications service provided by another. 20
- (3) In this section “number” has the same meaning as in section 43. 25

General conditions: must-carry obligations

49 Must-carry obligations

- (1) General conditions may include conditions making any such provision as OFCOM consider appropriate for securing that particular services are broadcast or otherwise transmitted by means of the electronic communications networks described in the conditions. 30
- (2) A general condition set under this section is not to require a service to be broadcast or transmitted by means of an electronic communications network unless – 35
 - (a) the service is included in the list of must-carry services; and
 - (b) the effect of the requirement is confined to networks by means of which public electronic communications services are provided that are used by a significant number of end-users as their principal means of receiving television programmes or sound programmes or both. 40
- (3) That list is as follows –
 - (a) any service of television programmes provided by the BBC so far as it is provided in digital form and is a service in relation to which OFCOM have functions;

- (b) a Channel 3 service so far as provided in digital form;
 - (c) Channel 4 so far as provided in digital form;
 - (d) Channel 5 so far as provided in digital form;
 - (e) S4C Digital;
 - (f) the teletext service referred to in section 49(2) of the 1990 Act. 5
- (4) It shall be the duty of the Secretary of State from time to time to review –
 - (a) the list of must-carry services; and
 - (b) any requirements for the time being in force under this section with respect to the terms on which services must be broadcast or otherwise transmitted. 10
- (5) If, on any such review, he considers it appropriate to do so, the Secretary of State may, by order, modify the list of must-carry services.
- (6) The Secretary of State may also by order make provision imposing requirements as to the terms, as between the person providing the service and the person providing the network, on which a service is to be broadcast or otherwise transmitted in pursuance of an obligation imposed by general conditions set under this section. 15
- (7) An order under subsection (6) may provide for the terms to be determined by OFCOM in accordance with the provisions of the order.
- (8) Where an order under subsection (6) provides for the terms on which a service is broadcast or otherwise transmitted to include the making of payments by or to the person providing the service, no subsequent order under that subsection may require the service to be broadcast or otherwise transmitted without payment (whether by or to the person providing the service). 20
- (9) Section 239 applies for construing this section as it applies for the purposes of Part 3. 25

Universal service conditions

50 Obligations to be secured by universal service conditions

- (1) The Secretary of State shall publish a notice setting out the extent to which the things falling within subsection (2) must, for the purpose of securing compliance with Community obligations, be provided, made available or supplied throughout the United Kingdom. 30
- (2) Those things are –
 - (a) electronic communications networks and electronic communications services; 35
 - (b) facilities capable of being made available as part of or in connection with any electronic communications service;
 - (c) directories capable of being used in connection with the use of an electronic communications network or electronic communications service; and 40
 - (d) directory enquiry facilities capable of being used for purposes connected with the use of such a network or service.

- (3) The universal service notice may contain guidance about matters relating to the pricing of things that the notice says must be provided, made available or supplied.
- (4) The Secretary of State may from time to time revise the universal service notice.
- (5) Where the Secretary of State revises the notice, he shall publish the revised notice. 5
- (6) Before publishing or revising the universal service notice, the Secretary of State must consult OFCOM and such other persons as he considers appropriate.
- (7) The publication of a notice or revised notice under this section must be in such manner as the Secretary of State considers appropriate for bringing it to the attention of the persons who, in his opinion, are likely to be affected by universal service conditions set by OFCOM in consequence of the notice. 10

51 Designation of universal service providers

- (1) OFCOM may by regulations make provision for the designation of the persons to whom universal service conditions are to be applicable. 15
- (2) Subject to subsection (3), those regulations shall not authorise the designation of a person other than a communications provider.
- (3) The regulations may provide for a person other than a communications provider to be designated for the purposes only of conditions relating to –
 - (a) the supply of directories capable of being used in connection with the use of an electronic communications network or electronic communications service; and 20
 - (b) the making available of directory enquiry facilities capable of being used for purposes connected with the use of such a network or service.
- (4) OFCOM may from time to time – 25
 - (a) review the designations for the time being in force in accordance with regulations under this section; and
 - (b) on such a review, consider what (if any) universal service conditions should continue to apply to each of the designated persons.
- (5) The procedure to be followed in the case of every such review must be the procedure provided for in regulations made by OFCOM. 30
- (6) Regulations made by OFCOM under this section must provide for a person's designation as a person to whom universal service obligations are to be applicable to cease to have effect where, in any such case as may be described in the regulations, the universal service conditions applied to him are all revoked. 35
- (7) Regulations made by OFCOM under this section providing a procedure for the designation of persons, or for the conduct of any review under subsection (4), must not provide for any procedure other than one appearing to OFCOM –
 - (a) to be efficient, objective and transparent; and 40
 - (b) not to involve, or to tend to give rise to, any undue discrimination against any person or description of persons.
- (8) Where –

- (a) OFCOM designate a person in accordance with regulations under this section, or
 - (b) a designation of a person in accordance with any such regulations ceases to have effect,
- OFCCOM shall give a notification of that designation, or of that fact, to the European Commission. 5
- (9) A notification under this section must identify the person who has been designated, or the person whose designation has ceased to have effect.
- (10) Section 255 applies to the power of OFCOM to make regulations under this section. 10

52 General provisions of universal service conditions

- (1) OFCOM may set any such universal service conditions as they consider appropriate for securing compliance with the obligations set out in the universal service notice.
- (2) Except in relation to the matters mentioned in section 51(3), universal service conditions must be set so as to apply only to a person who is a communications provider. 15
- (3) Universal service conditions applied to a person must include a condition requiring him to publish information about his performance in complying with the universal service conditions that apply to him. 20
- (4) A condition set in accordance with subsection (3) must contain provision which—
- (a) requires information published in accordance with it to be updated from time to time and published again;
 - (b) requires information so published to satisfy such requirements as OFCOM consider appropriate for securing that it is adequate; and 25
 - (c) requires information so published to be framed by reference to the quality of service parameters, definitions and measurement methods set out in Annex III to the Universal Service Directive.
- (5) A condition set in accordance with that subsection may impose requirements as to— 30
- (a) the times at which information published in accordance with it is to be published; and
 - (b) the form and manner in which that information is to be published.
- (6) Universal service conditions may impose an obligation on a person to whom they apply to do one or both of the following, if required to do so by OFCOM— 35
- (a) to make facilities available for enabling information published in pursuance of a condition applied to that person under subsection (3) to be independently audited;
 - (b) to meet the costs of any independent auditing of that information that is required by OFCOM. 40
- (7) The reference in subsection (6) to the independent auditing of information is a reference to its being audited by a qualified auditor—
- (a) for accuracy; and
 - (b) for its usefulness in the making of comparisons with information published by other designated universal service providers. 45

- (8) Universal service conditions may impose performance targets on designated universal service providers with respect to any of the matters in relation to which obligations may be imposed by such conditions.
- (9) Before setting universal service conditions authorised by subsection (8), OFCOM must consult such of the persons who, in their opinion, are likely to be affected by the conditions as they think fit. 5
- (10) In setting a universal service condition, OFCOM is to have regard to any guidance about matters relating to pricing that is contained in the universal service notice.
- (11) In this section “qualified auditor” means a person eligible, in accordance with Part 2 of the Companies Act 1989 (c. 40), for appointment as a company auditor. 10

53 Tariffs etc. for universal services

- (1) It shall be the duty of OFCOM –
 - (a) to keep under review universal service tariffs; and 15
 - (b) to monitor changes to those tariffs.
- (2) Universal service conditions may require –
 - (a) the use of a common tariff, or of common tariffs, in relation to anything mentioned in section 50(2);
 - (b) the use, in such cases as may be specified or described in the conditions, of such special tariffs in relation to anything so mentioned as may be so specified or described; and 20
 - (c) tariffs used in accordance with the conditions to be fixed using such methods, and by reference to such methods of computing costs, as may be so specified or described. 25
- (3) Universal service conditions must secure that customers of a designated universal service provider are not required, by means of –
 - (a) the universal service tariffs of that provider, or
 - (b) other terms and conditions on which anything is provided, made available or supplied to them in accordance with a universal service condition, 30
 to subsidise other services.
- (4) For the purposes of subsection (3) customers of a designated universal service provider subsidise other services to the extent that payments made by those customers are used – 35
 - (a) to meet the cost of the provision, making available or supply (whether to those customers or to other persons) of anything that is not required to be provided, made available or supplied in pursuance of a universal service condition applying to that provider; or
 - (b) otherwise to pay for the provision, making available or supply of any thing that is not so required. 40
- (5) It shall be the duty of OFCOM, in setting any universal condition about universal service tariffs, to have regard to anything ascertained by them in the performance of their duty under subsection (1).

- (6) References in this section to a universal service tariff are references to any of the tariffs used by designated universal service providers in relation to the things for the time being required by the universal service notice.
- (7) In this section “tariff” includes a pricing structure.

54 Directories and directory enquiry facilities

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- (1) This section applies where universal service conditions require a designated universal service provider –
 - (a) to supply a directory capable of being used in connection with the use of an electronic communications network or electronic communications service; and 10
 - (b) to make available directory enquiry facilities capable of being used for purposes connected with use of such a network or service.
- (2) The universal service conditions applied to the provider must include such conditions as OFCOM consider appropriate for securing that the provider does not unduly discriminate against any source of relevant information – 15
 - (a) in the compiling of the directory or the answering of directory enquiries; or
 - (b) in the treatment in the directory, or for the purposes of the facilities, of any relevant information from that source.
- (3) In this section – 20
 - (a) references to a source of relevant information are references to a communications provider or designated universal service provider who provides information for inclusion in the directory or for use in the answering of directory enquiries; and
 - (b) references to relevant information are references to information 25 provided for such inclusion or use.

55 Review of compliance costs

- (1) OFCOM may from time to time review the extent (if any) of the financial burden for a particular designated universal service provider of complying in relation to any matter with any one or more of the universal service conditions applied to him. 30
- (2) Where regulations under section 51 provide for a method of calculating that financial burden to be used for the purposes of a provision that requires the burden to be taken into account in determining whom to designate, that method of calculation is to be the method applied on any review under this section. 35
- (3) Where subsection (2) does not apply, that financial burden is to be taken to be the amount calculated by OFCOM to be the net cost of compliance after allowing for any market benefits accruing to the designated universal service provider from – 40
 - (a) his designation; and
 - (b) the application to him of universal service conditions.
- (4) After carrying out a review under this section OFCOM shall either –

- (a) cause the calculations made by them on the review to be audited by a person who appears to them to be independent of designated universal service providers; or
 - (b) themselves carry out an audit of those calculations.
- (5) OFCOM shall ensure, in the case of every audit carried out under subsection (4), that a report on the audit – 5
 - (a) is prepared; and
 - (b) if not prepared by OFCOM, is provided to them.
- (6) It shall be the duty of OFCOM, in the case of every review under this section, to publish – 10
 - (a) their conclusions on the review; and
 - (b) a summary of the report of the audit which was carried out as respects the calculations made for the purposes of that review.
- (7) The publication of anything under subsection (6) must be a publication in such manner as OFCOM consider appropriate for bringing it to the attention of the persons who, in their opinion, are likely to be affected by it. 15

56 Sharing of burden of universal service obligations

- (1) This section applies where OFCOM –
 - (a) have concluded, on a review under section 55, that complying in relation to any matter with universal service conditions imposes a financial burden on a particular designated universal service provider; and 20
 - (b) have published that conclusion in accordance with that section.
- (2) OFCOM shall determine, in the case of the designated universal service provider, whether they consider it would be unfair for that provider to bear, or to continue to bear, the whole or any part of so much of that burden as (apart from a determination under this section) would fall on him. 25
- (3) If –
 - (a) OFCOM decide that it would be unfair for the designated universal provider to bear, or to continue to bear, the whole or any part of the financial burden mentioned in subsection (1), and 30
 - (b) an application for a determination under this subsection is made to OFCOM by that provider,

OFCOM may determine that contributions are to be made by communications providers to whom general conditions are applicable for meeting, in whole or in part, so much of that burden as falls on that provider. 35
- (4) The making of any of the following must be in accordance with regulations made by OFCOM –
 - (a) a determination by OFCOM of the extent of the financial burden that exists for the designated universal service provider of complying in relation to any matter with universal service conditions; 40
 - (b) an application for the purposes of subsection (3)(b);
 - (c) a determination by OFCOM of whether it is or would be unfair for the designated universal service provider to bear, or to continue to bear, the burden of complying in relation to any matter with universal service conditions; 45

- (d) a determination of the extent (if any) to which that is or would be unfair.
- (5) The assessment, collection and distribution of contributions under subsection (3) is not to be carried out except in accordance with a mechanism provided for in a scheme contained in regulations made by OFCOM. 5
- (6) It shall be the duty of OFCOM to exercise their power to make regulations under this section in the manner they consider will secure that the assessment, collection and distribution of contributions under subsection (3) is carried out –
 - (a) in an objective and transparent manner; 10
 - (b) in a manner that does not involve, or tend to give rise to, any undue discrimination against particular communications providers or particular designated universal service providers, or against a particular description of them; and
 - (c) in a manner that avoids, or (if that is impracticable) at least minimises, any distortion of competition or of customer demand. 15
- (7) Regulations made by OFCOM under this section may provide for a scheme containing the provision mentioned in subsection (5), and for any fund set up for the purposes of such a scheme, to be administered either –
 - (a) by OFCOM; or 20
 - (b) by such other person as may be specified in the regulations.
- (8) A person other than OFCOM is not to be specified in regulations under this section as the administrator of such a scheme or fund unless he is a person who OFCOM are satisfied is independent of both –
 - (a) the persons who are designated universal service providers; and 25
 - (b) communications providers to whom general conditions are applicable.
- (9) Section 255 applies to the powers of OFCOM to make regulations under this section.

57 Report on sharing mechanism

- (1) This section applies where regulations under section 56 provide for a scheme for the assessment, collection and distribution of contributions under subsection (3) of that section. 30
- (2) OFCOM must prepare and publish a report setting out, in relation to the period to which it applies –
 - (a) every determination by OFCOM that has had effect in relation to any time in that period as a determination of the costs of providing anything contained in the universal service notice; 35
 - (b) the market benefits for each designated universal service provider that have accrued to him during that period from his designation and from the application to him of universal service conditions; and 40
 - (c) the contribution made under section 56(3) by every person who has made a contribution during that period.
- (3) The first report under this section must be prepared in relation to the period of twelve months beginning with the coming into force of the first regulations to be made under section 56. 45

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- (4) Every subsequent report must be prepared in relation to the period of twelve months beginning with the end of the period to which the previous report applied.
 - (5) Every report under this section –
 - (a) must be prepared as soon as practicable after the end of the period to which it is to apply; and 5
 - (b) must be published as soon as practicable after its preparation is complete.
 - (6) OFCOM shall not be required under this section –
 - (a) to publish any matter that is confidential in accordance with subsection (7) or (8); or 10
 - (b) to publish anything that it would not be reasonably practicable to publish without disclosing such a matter.
 - (7) A matter is confidential under this subsection if –
 - (a) it relates specifically to the affairs of a particular body of persons, whether corporate or unincorporate; and 15
 - (b) publication of that matter would or might, in OFCOM's opinion, seriously and prejudicially affect the interests of that body.
 - (8) A matter is confidential under this subsection if –
 - (a) it relates to the private affairs of an individual; and 20
 - (b) publication of that matter would or might, in OFCOM's opinion, seriously and prejudicially affect the interests of that individual.
 - (9) The publication of a report under this section must be a publication in such manner as OFCOM consider appropriate for bringing it to the attention of the persons who, in their opinion, are affected by the matters to which it relates. 25

Access-related conditions

58 Permitted subject-matter of access-related conditions

- (1) The only conditions that may be set under section 35 as access-related conditions are those authorised by this section.
- (2) Access-related conditions may include conditions relating to the provision of such network access and service interoperability as appears to OFCOM appropriate for the purpose of securing –
 - (a) efficiency on the part of communications providers and persons making associated facilities available;
 - (b) sustainable competition between them; and 35
 - (c) the greatest possible benefit for the end-users of public electronic communications services.
- (3) Access-related conditions may include conditions appearing to OFCOM to be appropriate for securing that persons to whom the electronic communications code applies participate, in cases where there are no viable alternative arrangements that may be made, in arrangements for –
 - (a) sharing the use of electronic communications apparatus; and
 - (b) apportioning and making contributions towards costs incurred in relation to any shared electronic communications apparatus. 40

- (4) Access-related conditions may include one which –
 - (a) is of a technical or operational nature;
 - (b) appears to OFCOM to be appropriate for securing the proper operation of an electronic communications network in compliance with any SMP condition falling within section 68(3); and 5
 - (c) is applied to –
 - (i) a person who is required by such an SMP condition to confer any entitlements to network access; or
 - (ii) a person on whom such an entitlement is or may be conferred in pursuance of a requirement imposed by such an SMP condition. 10
- (5) Access-related conditions may include one containing the provision required by section 60(2).

59 Specific types of access-related conditions

- (1) The conditions that may be set by virtue of section 58(2) include conditions which, for the purpose of securing end-to-end connectivity for the end-users of public electronic communications services provided by means of a series of electronic communications networks – 15
 - (a) impose obligations on a person controlling network access to any of those networks; and 20
 - (b) require the interconnection of the networks.
- (2) The conditions that may be set by virtue of section 58(2) also include such conditions imposing obligations on a person providing facilities for the use of application programme interfaces or electronic programme guides as OFCOM consider to be necessary for securing – 25
 - (a) that persons are able to have access to must-carry services; and
 - (b) that the facility for using those interfaces or guides is provided on terms which –
 - (i) are fair and reasonable; and
 - (ii) do not involve, or tend to give rise to, any undue discrimination against any person or description of persons. 30
- (3) In this section –
 - “application programme interface” means any facility for allowing any software to make use, in connection with any of the matters mentioned in subsection (4), of facilities contained in other software; 35
 - “end to end connectivity” means the facility –
 - (a) for different end-users of the same public electronic communications service to be able to communicate with each other; and
 - (b) for the end-users of different such services to be able, each using the service of which he is the end-user, to communicate with each other; 40
 - “electronic programme guide” means any facility by means of which a person has access to any service which consists of any one or more of the following – 45
 - (a) the listing or promotion, or both the listing and the promotion, of some or all of the programmes included in any one or more programme services;

- (b) a facility for obtaining access, in whole or in part, to the programme service or services;
 - (c) a facility for controlling the circumstances in which such access is allowed;
- “must-carry services” means any services that are broadcast or otherwise transmitted in pursuance of obligations imposed by general conditions set under section 49. 5
- (4) The matters mentioned in subsection (3), in the definition of “application programme interface”, are –
 - (a) allowing a person to have access to a programme service; 10
 - (b) allowing a person, other than a communications provider or a person who makes associated facilities available, to make use of an electronic communications network by means of which a programme service is broadcast or otherwise transmitted;
 - (c) allowing a person to become the end-user of any description of public electronic communications service. 15
- (5) This section is not to be construed as restricting the provision that may be made under section 58(2).

60 Conditional access systems and access to digital services

- (1) It shall be the duty of OFCOM, when setting a condition falling within section 58(4), to ensure that it contains all such provision as they consider appropriate for the purpose of taking account of the relevant international standards. 20
- (2) It shall be the duty of OFCOM to ensure –
 - (a) that access-related conditions are applied to every person who provides a conditional access system in relation to a protected programme service; and 25
 - (b) that those conditions make all such provision as is required by virtue of Part I of Annex I of the Access Directive (conditions relating to access to digital television and radio services).
- (3) In this section – 30
 - “conditional access system” means any system, facility, arrangements or technical measure under or by means of which access to programme services requires –
 - (a) a subscription to the service or to a service that includes that service; or 35
 - (b) an authorisation to view it, or to listen to it, on a particular occasion;
 - “protected programme service” means a programme service the programmes included in which cannot be viewed or listened to in an intelligible form except by the use of a conditional access system. 40

61 Modification and revocation of access-related conditions

- (1) This section applies in the case of conditions falling within section 60(2) which have been set by OFCOM in relation to a particular person (“the system provider”).
- (2) OFCOM shall not give effect to a proposal to modify or revoke any of the conditions unless – 45

- (a) they have carried out an analysis of a market for the purpose of determining in accordance with this Chapter whether that person is or remains a person on whom SMP conditions are capable of being imposed;
 - (b) they have determined in consequence of that analysis that he is not; and
 - (c) they are satisfied that the modification or revocation will not have an adverse effect on any or all of the matters mentioned in subsection (3).
- (3) Those matters are –
 - (a) the accessibility to any persons of services that are included in the list of must-carry services for the time being in force under section 49;
 - (b) the prospects for effective competition in the market for programme services provided by being broadcast or otherwise transmitted in digital form; and
 - (c) the prospects for effective competition in the markets for conditional access systems and other associated facilities.
- (4) In this section “conditional access system” has the same meaning as in section 60.

Privileged supplier conditions

62 Imposition of privileged supplier conditions

- (1) It shall be the duty of OFCOM to secure that privileged supplier conditions containing all such provision falling within subsection (3) as they consider appropriate are applied to every public communications provider to whom this section applies.
- (2) This section applies to every public communications provider who –
 - (a) enjoys special or exclusive rights in relation to the provision of any non-communications services; and
 - (b) is not such a provider in respect only of associated facilities.
- (3) The provision that may be contained in a condition set under section 35 as a privileged supplier condition is any such provision as OFCOM consider appropriate for any one or more of the following purposes –
 - (a) requiring the provider to whom it applies to keep separate accounts in relation to his public electronic communications network or public electronic communications service and other matters;
 - (b) requiring that provider to submit the accounts of the different parts of his undertaking, and any financial report relating to a part of that undertaking, to an independent auditor for auditing;
 - (c) requiring the accounts of the different parts of his undertaking to be published;
 - (d) securing, by means other than the keeping of separate accounts, the structural separation of the different parts of his undertaking.
- (4) OFCOM shall not be required under this section to apply a condition to a person where they are satisfied that that person has an annual turnover in relation to all his communications activities that is less than €50 million.
- (5) Where in a case falling within subsection (4) OFCOM are not required to apply a privileged supplier condition to any person, they may apply such a condition to him if they think fit.

- (6) The reference in subsection (4) to a person’s communications activities is a reference to any activities of his that consist in, or are connected with, either or both of the following—
- (a) the provision of any one or more electronic communications networks;
 - (b) the provision any one or more electronic communications services. 5
- (7) The making, for the purposes of subsection (4), of—
- (a) any determination of the period in respect of which a person’s annual turnover in relation to any activities is computed, and
 - (b) any determination of the amount in Euros of that turnover for any period, 10
- must be in accordance with such rules as OFCOM consider to be reasonable.
- (8) OFCOM shall publish any rules made by them for the purposes of subsection (7) in such manner as they consider appropriate for bringing them to the attention of the persons who, in their opinion, are likely to be affected by them.
- (9) In this section 15
- “non-communications services”, in relation to any person, means services other than those consisting in, or connected with, the provision by him of—
- (a) a public electronic communications network; or
 - (b) a public electronic communications service; 20
- “special or exclusive rights” has the same meaning as in Article 86 of the EEC Treaty.

SMP conditions: market power determinations

63 Circumstances required for the setting of SMP conditions

- (1) For the purposes of this Chapter a person shall be taken to have significant market power in relation to any market if (whether alone or in combination with others) he enjoys a position which amounts to or is equivalent to dominance of the market. 25
- (2) References in this section to a person’s dominance of a market are references to his enjoying a position of economic strength affording him the ability to behave, to an appreciable extent, independently of— 30
- (a) any competitors;
 - (b) the persons to whom he provides services; and
 - (c) all other customers in the market.
- (3) A person may be taken to enjoy a position of dominance of a market if he is one of a number of persons who enjoy such a position in combination with each other. 35
- (4) A person or combination of persons may be taken to enjoy a position of dominance of a market by reason wholly or partly of his or their position in a closely related market if the links between the two markets allow the market power held in the closely related market to be used in a way that influences the other market so as to strengthen the position in the other market of that person or combination of persons. 40

- (5) The matters that must be taken into account in determining whether a combination of persons enjoys a position of dominance of a market include, in particular, those matters set out in Annex II of the Framework Directive.

64 Market power determinations

- (1) Before making a market power determination, OFCOM must – 5
 - (a) identify (by reference, in particular, to area and locality) the markets which in their opinion are the ones which in the circumstances of the United Kingdom are the markets in relation to which it is appropriate to consider whether to make the determination; and
 - (b) carry out an analysis of the identified markets. 10
- (2) In identifying or analysing any market for the purposes of this Chapter, OFCOM shall have regard, to such extent as they consider appropriate, to all applicable guidelines and recommendations which –
 - (a) have been issued or made by the European Commission in pursuance of Community legislation; and 15
 - (b) relate to market identification and analysis.
- (3) In considering whether to make or revise any market power determination, OFCOM shall have regard, to such extent as they consider appropriate, to all applicable guidelines and recommendations which –
 - (a) have been issued or made by the European Commission in pursuance of Community legislation; and 20
 - (b) relate to market analysis or the determination of what constitutes significant market power.
- (4) The means by which a market power determination is to be made is the publication of a notification containing the determination. 25
- (5) A copy of every market power determination must be sent by OFCOM to the European Commission.

65 Notifications for setting SMP conditions

- (1) This section applies in the case of every notification under section 36(2) with respect to the setting of an SMP condition. 30
- (2) The notification must be given before the identification of the market and the making of the market power determination by reference to which it is proposed to set the condition.
- (3) The notification must set out all the following things, as well as the matters mentioned in section 36(2) – 35
 - (a) the market that OFCOM are proposing to identify for the purpose of making a market power determination in relation to the person to whom the condition is to apply;
 - (b) their reasons for proposing to identify that market; and
 - (c) the market power determination that they are proposing to make; 40
 - (d) their reasons for proposing to make that determination.
- (4) The notification must also state that the representations that may be made about the proposal to set the condition may include representations about –
 - (a) the proposal to identify the market specified in the notification; and

- (b) the proposal to make the market determination so specified.
- (5) A copy of the notification must be sent by OFCOM to the person to whom the proposed condition is to apply.

66 European Commission’s control of SMP conditions

- (1) This section applies, in the case of a notification under section 36(2) with respect to the setting of an SMP condition, to any proposal contained in the notification – 5
 - (a) to identify a particular market; or
 - (b) to make a market power determination.
- (2) If, within the representations period, OFCOM are notified by the European Commission in accordance with Article 7(4) of the Framework Directive (market identifications that do not conform to Commission recommendations and determinations that affect trade between member States) – 10
 - (a) that that Commission considers that giving effect to the proposal would create a barrier in relation to the single European market, or 15
 - (b) that that Commission has serious doubt as to whether giving effect to the proposal would be compatible with the requirements of any Community obligations,

OFCOM are not to give effect to the proposal before the end of a further two months beginning with the end of the representations period. 20
- (3) Where, before the end of that two month period, the European Commission makes a decision for the purposes of Article 7(4) of the Framework Directive that the proposal should be withdrawn, OFCOM –
 - (a) must withdraw it; and
 - (b) shall not be entitled to give effect to it. 25
- (4) In this section “the representations period”, in relation to a notification under section 36(2), means the period specified in that notification for the making of representations about the proposals contained in it.

67 Modification and revocation of SMP conditions

- (1) This section applies where OFCOM have identified and analysed a market for the purposes of making a market power determination. 30
- (2) OFCOM may from time to time, as they think fit, carry out further analyses of the identified market for one or both of the following purposes –
 - (a) reviewing market power determinations made on the basis of any earlier analysis; 35
 - (b) deciding whether to make proposals for the modification of any SMP conditions set by reference to any such market power determination.
- (3) It shall be the duty of OFCOM to carry out such a further analysis of a market as soon as reasonably practicable after any recommendations are made by the European Commission that affect the matters that were taken into account, or could have been taken into account, in the case of the last analysis by OFCOM of that market. 40
- (4) Where on, or in consequence of, any further analysis under this section, OFCOM determine that a person to whom any SMP conditions apply is no longer a person with significant market power in that market, they shall revoke 45

every SMP condition applied to that person by reference to the market power determination made on the basis of the earlier analysis.

- (5) OFCOM shall not modify the market power conditions applying to any person except following the carrying out under this section of –
 - (a) a further analysis; and 5
 - (b) a review of any market power determination made in that person’s case.
- (6) Before carrying out any further analysis under subsection (2), OFCOM may review any decision of theirs identifying the markets which it was appropriate to consider for the purpose of carrying out any earlier analysis. 10
- (7) Where on such a review OFCOM conclude that the appropriate markets have changed –
 - (a) they shall identify the markets they now consider to be appropriate ones; and
 - (b) those markets shall be the identified markets for the purposes of the further analysis. 15
- (8) The provisions of sections 65 and 66 apply in the case of a notification under section 36(2) with respect to the modification or revocation of SMP conditions applying to any person as they apply in the case of any proposal to set an SMP condition but as if –
 - (a) references to the identification of a market included references to any market in relation to which a review under this section is carried out; and
 - (b) references to a proposal to make a market power determination included references to a proposal to revise or confirm such a determination following a review under this section. 20 25

SMP conditions: subject matter

68 Conditions about network access etc.

- (1) Where OFCOM have made a market power determination that any person to whom this section applies (“the dominant provider”) has significant market power in an identified market, they shall –
 - (a) set such SMP conditions authorised by this section as they consider it appropriate to apply to that person in respect of the relevant network or relevant facilities; and
 - (b) apply those conditions to that person. 30 35
- (2) This section applies to –
 - (a) any person who provides a public electronic communications network; and
 - (b) any person who makes available facilities that are associated facilities by reference to such a network. 40
- (3) The SMP conditions set in accordance with this section may include conditions requiring the dominant provider to give such entitlements as OFCOM may from time to time direct as respects –
 - (a) the provision of network access to the relevant network;
 - (b) the use of the relevant network; and 45

-
- (c) the availability of the relevant facilities.
- (4) In determining what conditions authorised by subsection (3) to set in a particular case, OFCOM shall take into account, in particular, the following factors –
- (a) the technical and economic viability, having regard to the state of market development, of installing and using facilities that would make the proposed network access unnecessary; 5
 - (b) the feasibility of the provision of the proposed network access;
 - (c) the investment made by the person initially providing or making available the network or other facility in respect of which an entitlement to network access is proposed; 10
 - (d) the need to secure effective competition in the long term;
 - (e) any rights to any intellectual property that are relevant to the proposal; and
 - (f) the desirability of securing that electronic communications services are provided that are available throughout the member States. 15
- (5) The conditions authorised by subsection (3) may include provision –
- (a) for securing fairness and reasonableness in the way in which such requests are made and responded to; and
 - (b) for securing that the obligations contained in the conditions are complied with within the periods and at the times required by or under the conditions. 20
- (6) The SMP conditions set in accordance with this section may include one or more of the following –
- (a) a condition requiring the dominant provider not to discriminate unduly against particular persons, or against a particular description of persons, in relation to any matter connected with network access to the relevant network or with the availability of the relevant facilities;. 25
 - (b) a condition requiring the dominant provider to publish, in such form and manner as OFCOM may from time to time direct, all such information as they may so direct for the purpose of securing transparency in relation to any such matter; 30
 - (c) a condition requiring the dominant provider to publish, in such form and manner as OFCOM may from time to time direct, the terms and conditions on which he is willing to enter into an access contract; 35
 - (d) a condition requiring the terms and conditions on which the dominant provider is willing to enter into an access contract to include such terms and conditions as may be specified or described in the condition;
 - (e) a condition requiring the dominant provider to make such modifications as OFCOM may direct of any offer by that provider which sets out the terms and conditions on which he is willing to enter into an access contract. 40
- (7) The SMP conditions set in accordance with this section may include conditions requiring the dominant provider to maintain a separation for accounting purposes between such different matters relating – 45
- (a) to network access to the relevant network, or
 - (b) to the availability of the relevant facilities,
- as OFCOM may from time to time direct.

- (8) The SMP conditions authorised by subsection (7) include conditions imposing requirements about the accounting methods to be used in maintaining the separation.
 - (9) The SMP conditions set in accordance with this section may include (subject to section 69) conditions imposing on the dominant provider –
 - (a) such price controls as OFCOM may direct in relation to matters connected with the provision of network access to the relevant network or with the availability of the relevant facilities;
 - (b) such rules as they may make in relation to those matters about the recovery of costs and cost orientation;
 - (c) such rules as they may make for those purposes about the use of cost accounting systems; and
 - (d) obligations to adjust prices in accordance with such directions given by OFCOM as they may consider appropriate.
 - (10) The SMP conditions authorised by subsection (9) include conditions requiring the application of presumptions in the fixing and determination of costs and charges for the purposes of the price controls, rules and obligations imposed by virtue of that subsection.
 - (11) Where OFCOM set any condition in accordance with this section imposing rules on the dominant provider about the use of cost accounting systems, it shall be their duty also to set and apply to him an SMP condition which imposes on him an obligation –
 - (a) to make arrangements for a description of the cost accounting system used in pursuance of that condition to be made available to the public; and
 - (b) to include in that description details of –
 - (i) the main categories under which costs are brought into account for the purposes of that system; and
 - (ii) the rules applied for the purposes of that system with respect to the allocation of costs.
 - (12) In this section –

“access contract” means –

 - (a) any contract for the provision by a person to whom this section applies to another person of network access to the relevant network; or
 - (b) any contract under which the relevant facilities are made available by a person to whom this section applies to another person;

“cost orientation” means the relationship between prices and costs;

“the relevant facilities”, in relation to a person to whom this section applies, means the associated facilities made available by that person in relation to a public electronic communications network; and

“the relevant network”, in relation to such a person, means the public electronic communications network provided by him.
- 69 Conditions about network access pricing etc.**
- (1) OFCOM shall not set any SMP condition falling within section 68(9) except where –

-
- (a) it appears to them from the market analysis carried out for the purpose of setting that condition that there is a relevant risk of adverse effects arising from price distortion; and
 - (b) it appears to OFCOM that the setting of the condition is appropriate for the purposes of –
 - (i) promoting efficiency;
 - (ii) sustaining competition; and
 - (iii) conferring the greatest possible benefits on the end-users of public electronic communications services.
 - (2) For the purposes of this section there is a relevant risk of adverse affects arising from price distortion if the dominant provider might –
 - (a) so fix and maintain some or all of his prices at an excessively high level, or
 - (b) so impose a price squeeze,
 as to have adverse consequences for end-users of public electronic communications services.
 - (3) In considering the matters mentioned in subsection (1)(b) OFCOM may –
 - (a) have regard to the prices at which services are available in comparable competitive markets;
 - (b) determine what they consider to represent efficiency using such cost accounting methods as they think fit.
 - (4) In this section “the dominant provider” has the same meaning as in section 68.

70 Conditions about network access in exceptional cases

- (1) This section applies where –
 - (a) OFCOM have made a market power determination that any person (“the dominant provider”) has significant market power in an identified market;
 - (b) that person is the provider of an electronic communications network or a person who makes associated facilities available; and
 - (c) OFCOM consider that there are exceptional circumstances making it appropriate for conditions with respect to the provision of network access to be applied to the dominant provider in addition to those that are required to be or may be applied to him apart from this section.
- (2) OFCOM may submit any additional SMP conditions which in those circumstances they consider it appropriate to set to the European Commission for approval.
- (3) If that Commission authorises the imposition of those conditions, OFCOM may set those conditions and apply them to the dominant provider.

71 Conditions about carrier selection and pre-selection

- (1) This section applies where –
 - (a) OFCOM have made a market power determination that any person (“the dominant provider”) has significant market power in an identified market; and
 - (b) it appears to OFCOM that the market in relation to which the market power determination has been made is a market relating to services for

the provision of public electronic communications networks for use by means of connections at fixed locations.

- (2) It shall be the duty of OFCOM to set and apply to the dominant provider such SMP conditions authorised by this section as they think fit.
- (3) The SMP conditions authorised by this section are conditions requiring the dominant provider to do one or both of the following –
 - (a) to make a relevant connection facility available to any person to whom he provides a public electronic communications service;
 - (b) for the purpose of making such a connection facility available to such users, to make facilities for interconnection available to a person providing an electronic communications service.
- (4) Where OFCOM set a condition under this section requiring the dominant provider to make a relevant connection facility available, they shall also set such SMP conditions as they consider appropriate –
 - (a) with respect to the relationship to costs of any prices fixed for the use of the facility; and
 - (b) for the purpose of securing that prices and other charges imposed on the persons to whom public electronic communications services are provided by the dominant provider do not constitute a disincentive to the use of the facility.
- (5) In this section “relevant connection facility” is a facility which –
 - (a) allows a person to whom a public electronic communications service is provided by means of an electronic communications network to select which public electronic communications service provided wholly or partly by means of that network is the service that he wishes to use; and
 - (b) enables that selection to be made either –
 - (i) by the use of a telephone number on each separate occasion on which a selection is made; or
 - (ii) by designating in advance the selection that is to apply on every occasion when no such selection as is mentioned in subparagraph (i) is made.

72 Conditions about regulation of services etc. for end-users

- (1) Where –
 - (a) OFCOM have made a market power determination that any person (“the dominant provider”) has significant market power in an identified market (“the relevant market”),
 - (b) the relevant market is one for the end-users of public electronic communications services that are available in that market, and
 - (c) it appears to OFCOM that the test in subsection (2) is satisfied in the case of that provider,
 they shall set and apply to that provider such SMP conditions authorised by this section as they consider appropriate.
- (2) That test is that OFCOM are unable, by the setting of conditions of the sorts specified in subsection (3), to perform, or fully to perform, their duties under section 4 in relation to the market situation in the relevant market.
- (3) The sorts of conditions referred to in subsection (2) are –
 - (a) access-related conditions; and

-
- (b) SMP conditions set under any of sections 68 to 71;
 - (4) The reference in that subsection to the market situation in the relevant market is a reference to the situation revealed by such market analyses of that market as may have been carried out for the purposes of any provision of this Chapter.
 - (5) The SMP conditions authorised by this section are conditions imposing on the dominant provider such regulatory controls as OFCOM may from time to time direct in relation to the provision by that provider of any public electronic communications service to the end users of that service. 5
 - (6) Where OFCOM set any condition under this section imposing regulatory control on tariffs or other matters to which costs are relevant, they shall also set and apply to the dominant provider an SMP condition which requires him, to the extent that they consider it appropriate – 10
 - (a) to use such cost accounting systems as may be determined by them;
 - (b) to have the use of those systems audited annually by a qualified auditor; and 15
 - (c) to publish an annual statement about compliance by the dominant provider with any obligation imposed by virtue of paragraph (a).
 - (7) It shall be the duty of OFCOM to provide the European Commission with all such information as that Commission requires them to provide about – 20
 - (a) any conditions set by OFCOM under this section; and
 - (b) the cost accounting systems used by the persons to whom those conditions apply in relation to the services regulated in accordance with the conditions.
 - (8) In this section “qualified auditor” means a person eligible, in accordance with Part 2 of the Companies Act 1989 (c. 40), for appointment as a company auditor. 25

73 Conditions about leased lines

- (1) This section applies where – 30
 - (a) OFCOM have made a market power determination that any person (“the dominant provider”) has significant market power in an identified market; and
 - (b) it appears to OFCOM that the market in relation to which the market power determination has been made is a market relating to the provision of any such leased lines as are identified by the European Commission in the List of Standards published in the Official Journal of the European Communities. 35
- (2) It shall be the duty of OFCOM to set and apply to the dominant provider such SMP conditions authorised by this section as they consider appropriate.
- (3) The SMP conditions authorised by this section are any conditions for applying, so far as required by Annex VII of Universal Service Directive, the principles of non-discrimination, cost orientation and transparency in relation to leased lines identified as mentioned in subsection (1). 40
- (4) In this section “leased line” means an electronic communications service the provision of which consists in the reservation of a fixed amount of transmission capacity between fixed points on the same or different electronic communications networks. 45

Enforcement of conditions

74 Notification of contravention of condition

- (1) Where OFCOM determine that there are reasonable grounds for believing that a person is contravening, or has contravened, any condition set under section 35, they may give that person a notification under this section. 5
- (2) A notification under this section is one which –
 - (a) sets out the determination made by OFCOM;
 - (b) specifies the condition and contravention in respect of which that determination has been made; and
 - (c) specifies the period during which the person notified has an opportunity of doing the things specified in subsection (3). 10
- (3) Those things are –
 - (a) making representations about the matters notified;
 - (b) complying with any notified condition of which he remains in contravention; and 15
 - (c) remedying the consequences of any contravention specified in the notification.
- (4) Subject to subsections (5) to (7) and section 78(3), the period for the doing of those things that is specified in a notification under this section must be the period of one month beginning with the day after the day on which the notification was given. 20
- (5) OFCOM may, if they think fit, allow a longer period for the doing of the things mentioned in subsection (3) either –
 - (a) by specifying a longer period in the notification; or
 - (b) by subsequently, on one or more occasions, extending the specified period. 25
- (6) The person notified shall have a shorter period for the doing of those things if a shorter period is agreed between OFCOM and the person notified.
- (7) The person notified shall also have a shorter period if –
 - (a) OFCOM have reasonable grounds for believing that the case is a case of repeated contravention; 30
 - (b) they have determined that, in those circumstances, a shorter period would be appropriate; and
 - (c) the shorter period has been specified in the notification.
- (8) A notification under this section – 35
 - (a) may be given in respect of more than one contravention; and
 - (b) if it is given in respect of a continuing contravention, may be given in respect of any period during which the contravention has continued.
- (9) Where a notification under this section has been given to any person in respect of a contravention of a particular condition, OFCOM may give a further notification in respect of a contravention of that condition if, and only if – 40
 - (a) the contravention is one occurring after the time of the giving of the earlier notification;

- (b) the subsequent notification is in respect of so much of a period during which the contravention in question was continuing as falls after any period to which the earlier notification relates; or
 - (c) the earlier notification has been withdrawn without a penalty having been imposed in respect of the notified contravention. 5
- (10) OFCOM shall not give a notification under this section in any case in which –
 - (a) they decide that the most appropriate way of proceeding in relation to the contravention in question would be under the Competition Act 1998 (c. 41); and
 - (b) they publish a notice to that effect in such manner as they consider appropriate for bringing their decision to the attention of the persons who, in their opinion, are likely to be affected by it. 10
- (11) For the purposes of this section a contravention is a repeated contravention, in relation to any notification with respect to that contravention if –
 - (a) a previous notification under this section has been given in respect of the same contravention or in respect of another contravention of the same condition; and 15
 - (b) the subsequent notification was given no more than twelve months after the making by OFCOM of a determination for the purposes of section 75(2) or 76(2) that the contravention to which the earlier notification related did occur. 20

75 Enforcement notification for contravention of conditions

- (1) This section applies where –
 - (a) a person (“the notified provider”) has been given a notification under section 74; 25
 - (b) OFCOM have allowed the notified provider an opportunity of making representations about the matters notified; and
 - (c) the period allowed for the making of the representations has expired.
- (2) OFCOM may give the notified provider an enforcement notification if they are satisfied – 30
 - (a) that he is or has been in contravention, in any of the respects notified, of a condition specified in the notification under section 74; and
 - (b) that he has not himself, during the period allowed under that section, taken all such steps as they consider appropriate – 35
 - (i) for complying with that condition; and
 - (ii) for remedying the consequences of the notified contravention of that condition.
- (3) An enforcement notification is a notification which imposes one or more of the following requirements on the notified provider – 40
 - (a) a requirement to take such steps for complying with the notified condition as may be specified in the notification;
 - (b) a requirement to take such steps for remedying the consequences of the notified contravention as may be so specified.
- (4) A decision of OFCOM to give an enforcement notification to any person – 45
 - (a) must be notified by them to that person, together with the reasons for the decision, no later than one week after it is taken; and

- (b) must fix a reasonable period for the taking of the steps required by the notification.
- (5) It shall be the duty of a person to whom an enforcement notification has been given to comply with it.
- (6) That duty shall be enforceable in civil proceedings by OFCOM for an injunction, for specific performance of a statutory duty under section 45 of the Court of Session Act 1988 (c. 36), or for any other appropriate relief. 5

76 Penalties for contravention of conditions

- (1) This section applies (in addition to section 75) where –
 - (a) a person (“the notified provider”) has been given a notification under section 74; 10
 - (b) OFCOM have allowed the notified provider an opportunity of making representations about the matters notified; and
 - (c) the period allowed for the making of the representations has expired.
- (2) OFCOM may impose a penalty on the notified provider if – 15
 - (a) he has been in contravention, in any of the respects notified, of a condition specified in his notification under section 74; and
 - (b) he has not, during the period allowed under that section, taken the steps OFCOM consider appropriate –
 - (i) for complying with the notified condition; and 20
 - (ii) for remedying the consequences of the notified contravention of that condition.
- (3) Where a notification under section 74 relates to more than one contravention, a separate penalty may be imposed in respect of each contravention.
- (4) Where such a notification relates to a continuing contravention, no more than one penalty may be imposed in respect of the period specified in the notification during which that contravention continued. 25
- (5) OFCOM may also impose a penalty on the notified provider if he has contravened, or is contravening, a requirement of an enforcement notification in respect of the notified contravention. 30
- (6) Where OFCOM impose a penalty on a person under this section, they shall –
 - (a) within one week of making their decision to impose the penalty, notify that person of that decision and of their reasons for that decision; and
 - (b) in that notification, fix a reasonable period after it is given as the period within which the penalty is to be paid. 35
- (7) A penalty imposed under this section –
 - (a) must be paid to OFCOM; and
 - (b) if not paid within the period fixed by them, is to be recoverable by OFCOM accordingly.

77 Amount of penalty under section 76

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- (1) The amount of a penalty imposed under section 76 is to be such amount not exceeding ten per cent. of the turnover of the notified provider’s relevant business for the relevant period as OFCOM, having regard to the matters mentioned in subsection (2), determine to be –

-
- (a) appropriate; and
 - (b) proportionate to the matter in respect of which it is imposed.
 - (2) Those matters are –
 - (a) any representations made to OFCOM by the notified provider;
 - (b) any steps taken by him towards complying with the conditions of contraventions of which have been notified to him under section 74; and 5
 - (c) any steps taking by him for remedying the consequences of those contraventions.
 - (3) For the purposes of this section – 10
 - (a) the turnover of a person’s relevant business for any period shall be calculated in accordance with such rules as may be set out by order made by the Secretary of State; and
 - (b) provision may also be made by such an order for determining what is to be treated as the network, service, facility or business by reference to which the calculation of that turnover falls to be made. 15
 - (4) No order is to be made containing provision the making of which is authorised by subsection (3) unless a draft of the order has been laid before Parliament and approved by a resolution of each House
 - (5) The Secretary of State may by order amend this section so as to substitute a different percentage for the percentage for the time being specified in subsection (1). 20
 - (6) In this section –
 - “relevant business” means (subject to the provisions of any order under subsection (3) and to subsection (7)) so much of any business carried on by the person in respect of whose contravention the penalty is imposed as consists in any one or more of the following – 25
 - (a) the provision of an electronic communications network;
 - (b) the provision of an electronic communications service;
 - (c) the making available of associated facilities; 30
 - (d) the supply of directories for use in connection with the use of such a network or service;
 - (e) the making available of directory enquiry facilities for use for purposes connected with the use of such a network or service;
 - (f) any business not falling within any of the preceding paragraphs which is carried on in association with any business in respect of which any access-related condition is applied to the person carrying it on; 35
 - “relevant period”, in relation to a contravention by any person of a condition set under section 35, means – 40
 - (a) except in a case falling within paragraph (b) or (c), the period of one year ending with the 31st March next before the time when notification of the contravention was given under section 74;
 - (b) in the case of a person who at that time, has been carrying on that business for a period of less than a year, the period, ending with that time, during which he has been carrying it on; and 45
 - (c) in the case of a person who at that time has ceased to carry on that business, the period of one year ending with the time when he ceased to carry it on.

- (7) So much of any business of a person on whom the penalty is imposed as falls within paragraph (f) of the definition of a relevant business shall be disregarded for the purposes of this section except in relation to –
- (a) a contravention of an access-related condition imposed in respect of that business; or
 - (b) a contravention of an enforcement notification relating to such a condition.
- (8) In this section “the notified provider” has the same meaning as in section 76.

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78 Power to deal with urgent cases

- (1) This section applies where OFCOM determine –
- (a) that they are entitled to give a notification under section 74 with respect to a contravention by any person (“the relevant person”) of a condition set under section 35;
 - (b) that there are reasonable grounds for suspecting that the case is an urgent case; and
 - (c) that the urgency of the case makes it appropriate for OFCOM to take action under this section.
- (2) A case is an urgent case for the purposes of this section if the contravention has resulted in, or creates an immediate risk of –
- (a) a serious threat to the safety of the public, to public health or to national security;
 - (b) serious economic or operational problems for any persons (other than the relevant person) who are communications providers or persons who make associated facilities available; or
 - (c) serious economic or operational problems for persons who make use of electronic communications networks, electronic communications services or associated facilities.
- (3) OFCOM may, in any notification under section 74 with respect to the contravention, specify such shorter period as they may determine for the doing of the things mentioned in subsection (3) of that section.
- (4) OFCOM shall also have power to give to the relevant person –
- (a) a direction that his entitlement to provide electronic communications networks or electronic communications services or to make associated facilities available is suspended (either generally or in relation to particular networks, services or facilities); or
 - (b) a direction that that entitlement is restricted in the respects set out in the direction.
- (5) A direction under subsection (4) –
- (a) must specify the networks, services and facilities to which it relates; and
 - (b) except so far as it otherwise provides, shall take effect for an indefinite period beginning with the time at which it is notified to the person to whom it is given.
- (6) A direction under subsection (4) –
- (a) in providing for the effect of a suspension or restriction to be postponed may provide for it to take effect only at a time determined by or in accordance with the terms of the direction; and

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- (b) in connection with the suspension or restriction contained in the direction or with the postponement of its effect, may impose such conditions on the relevant person as appear to OFCOM to be appropriate for the purpose of protecting his customers.
- (7) Those conditions may include a condition requiring the making of payments by way of compensation for loss suffered by the relevant person's customers as a result of the direction. 5
- (8) Where OFCOM –
- (a) give a notification to any person under section 74 specifying a period the length of which has been fixed by virtue of subsection (3) of this section, or 10
- (b) give a direction under subsection (4) of this section to any person, they shall, as soon as practicable after doing so, provide that person with an opportunity of making representations about the effect of the notification or direction and of proposing steps for remedying the situation. 15
- (9) If OFCOM consider it appropriate to do so (whether in consequence of any representations or proposals made to them under subsection (8) or otherwise), they may do one or both of the following –
- (a) modify any requirement of the notification to take steps for remedying the contravention; 20
- (b) revoke a direction given under subsection (4) –
- (i) with effect from such time as they may direct,
- (ii) subject to compliance with such requirements as they may specify, and
- (iii) to such extent and in relation to such networks, services or facilities, or parts of any network, service or facility as they may determine. 25
- (10) Where OFCOM receive representations from any person under subsection (6), it shall be their duty, as soon as reasonably practicable, to notify that person either – 30
- (a) of their decision to act under subsection (9); or
- (b) that they have decided to confirm the effect of the notification or direction.

79 Suspending or restricting entitlement for contravention of conditions

- (1) OFCOM may give a direction under this section to a person who is a communications provider or makes associated facilities available ("the contravening provider) if they are satisfied – 35
- (a) that he is or has been in serious and repeated contravention of conditions set under section 35;
- (b) that the imposition of penalties and the giving of enforcement notifications under section 75 have failed to secure compliance by that person with the conditions that he has contravened; and 40
- (c) that the giving of the direction is both appropriate and proportionate to the contraventions in respect of which it is imposed.
- (2) A direction under this section is – 45
- (a) a direction that the entitlement of the contravening provider to provide electronic communications networks, electronic communications

- services or associated facilities, or two or more of them, is suspended (either generally or in relation to particular networks, services or facilities); or
 - (b) a direction that that entitlement is restricted in the respects set out in the direction. 5
- (3) A direction under this section –
- (a) must specify the networks, services and facilities to which it relates; and
 - (b) except so far as it otherwise provides, shall take effect for an indefinite period beginning with the time at which it is notified to the person to whom it is given. 10
- (4) A direction under this section –
- (a) in providing for the effect of a suspension or restriction to be postponed may provide for it to take effect only at a time determined by or in accordance with the terms of the direction; and
 - (b) in connection with the suspension or restriction contained in the direction or with the postponement of its effect, may impose such conditions on the contravening provider as appear to OFCOM to be appropriate for the purpose of protecting that provider’s customers. 15
- (5) Those conditions may include a condition requiring the making of payments by way of compensation for loss, damage or inconvenience suffered by the contravening provider’s customers as a result of the direction. 20
- (6) Where OFCOM give a direction under this section, they shall, as soon as practicable after doing so, provide that person with an opportunity of –
- (a) making representations about the effect of the direction; and
 - (b) proposing steps for remedying the situation. 25
- (7) If OFCOM consider it appropriate to do so (whether in consequence of any representations or proposals made to them under subsection (6) or otherwise), they may revoke a direction under this section –
- (a) with effect from such time as they may direct;
 - (b) subject to compliance with such requirements as they may specify; and 30
 - (c) to such extent and in relation to such networks, services or facilities, or parts of any network, service or facility as they may determine.
- (8) For the purposes of this section there have, in any person’s case, been repeated contraventions of conditions set under section 35 if –
- (a) more than one notification under section 74 has been given to that person in respect of the same contravention or in respect of different contraventions of the same condition; and 35
 - (b) the latest of those notifications was given no more than twelve months after the making by OFCOM of a determination for the purposes of section 75(2) or 76(2) that the contravention to which the earliest notification related did occur. 40

80 Enforcement of directions under ss. 78 and 79

- (1) A person is guilty of an offence if he provides an electronic communications network or electronic communications service, or makes available any associated facility –
- (a) while his entitlement to do so is suspended by a direction under section 78(4) or 79; or 45

- (b) in contravention of any restriction contained in such a direction.
- (2) A person guilty of an offence under subsection (1) shall be liable –
 - (a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to a fine. 5
- (3) Sections 74 to 78 apply in relation to a contravention of conditions imposed by a direction under section 78(6) or 79(4) as they apply in relation to a contravention of conditions set under section 35.

81 Civil liability for breach of conditions etc.

- (1) The obligation of a person to comply with – 10
 - (a) any conditions set under section 35 which apply to him,
 - (b) any requirement imposed on him by an enforcement notification under section 75, and
 - (c) the conditions of a direction under section 78(4) or 79,
 shall be a duty owed to every person who may be affected by a contravention of the condition or requirement. 15
- (2) Where a duty is owed by virtue of this section to any person –
 - (a) any breach of the duty that causes that person to sustain loss or damage, and
 - (b) any act which by inducing a breach of the duty or interfering with its performance causes that person to sustain loss or damage and which is done wholly or partly for achieving that result,
 shall be actionable at the suit or instance of that person. 20
- (3) In any proceedings brought against any person by virtue of subsection (2)(a) it shall be a defence for that person to show that he took all reasonable steps and exercised all due diligence to avoid contravening the condition in question 25

Electronic communications code

82 Application of the electronic communications code

- (1) In this Chapter “the electronic communications code” means the code set out in Schedule 2 to the Telecommunications Act 1984 (c. 12). 30
- (2) Schedule 3 (which amends Schedule 2 to the Telecommunications Act 1984 for the purpose of translating the telecommunications code into a code applicable in the context of the new regulatory regime established by this Act) shall have effect.
- (3) The electronic communications code shall have effect – 35
 - (a) in the case of any person to whom it is applied by a direction given by OFCOM; and
 - (b) in the case of the Secretary of State or any Northern Ireland department where the Secretary of State or that department is providing or proposing to provide an electronic communications network. 40
- (4) A direction applying the electronic communications code in any person’s case may provide for that code to have effect in his case in relation only –
 - (a) to such places or localities, or

- (b) to such electronic communications network or part of an electronic communications network,
as may be specified or described in the direction.
 - (5) OFCOM may by order provide for the electronic communications code to have effect for all purposes with a different amount substituted for the amount for the time being specified in paragraph 16(3) of the code (minimum compensation). 5
 - (6) Section 255 applies to the power of OFCOM to make an order under subsection (5).
- 83 Procedure for directions applying code 10**
 - (1) OFCOM shall not give a direction applying the electronic communications code in any person’s case except on an application made for the purpose by that person.
 - (2) If OFCOM publish a notification setting out their requirements with respect to – 15
 - (a) the form and content for an application for a direction applying the electronic communications code, and
 - (b) the manner in which it is to be made,such an application must be made in accordance with the requirements for the time being in force. 20
 - (3) OFCOM may –
 - (a) from time to time review the requirements for the time being in force for the purposes of subsection (2); and
 - (b) on any such review, modify them in such manner as they think fit by giving a notification of the revised requirements. 25
 - (4) In considering whether to apply the electronic communications code in the case of any person, OFCOM shall have regard, in particular, to each of the following matters –
 - (a) the benefit to the public of the electronic communications network by reference to which the code is to be applied to that person; 30
 - (b) the practicability of the provision of that network without the application of the code;
 - (c) the need to encourage the sharing of the use of electronic communications apparatus;
 - (d) whether the person in whose case it is proposed to apply the code will be able to meet liabilities arising as a consequence of – 35
 - (i) the application of the code in his case; and
 - (ii) any conduct of his in relation to the matters with which the code deals.
 - (5) For the purposes of subsections (4) and (5) of section 3 OFCOM’s duty under subsection (4) ranks equally with their duties under that section. 40
 - (6) Before giving any direction under section 82, OFCOM must –
 - (a) publish a notification of their proposal to give the direction; and
 - (b) consider any representations about that proposal that are made to OFCOM within the period specified in the notification. 45

- (7) A notification for the purposes of subsection (6)(a) must contain the following –
- (a) a statement of OFCOM’s proposal;
 - (b) a statement of OFCOM’s reasons for their proposal;
 - (c) a statement of the period, which must end no less than one month after the day on which the notification is given, within which representations may be made to OFCOM about the proposal. 5
- (8) The statement of OFCOM’s proposal must –
- (a) contain a statement that they propose to apply the code in the case of the person in question; 10
 - (b) set out any proposals of OFCOM to impose terms under section 82(4); but this subsection is subject to sections 89(6) and 90(5).
- (9) The publication by OFCOM of a notification for any of the purposes of this section must be a publication in such manner as OFCOM consider appropriate for bringing the notification to the attention of the persons who, in their opinion, are likely to be affected by it. 15

84 Register of persons in whose case the code applies

- (1) It shall be the duty of OFCOM to establish and maintain a register of persons in whose case the electronic communications code applies by virtue of a direction under section 82. 20
- (2) OFCOM shall record in the register every direction given under that section.
- (3) Information recorded in the register shall be so recorded in such manner as OFCOM consider appropriate.
- (4) OFCOM shall make the register available for public inspection –
- (a) during such hours, and 25
 - (b) on payment of such fees,
- as they may by order prescribe.
- (5) Section 255 applies to the power of OFCOM to make an order under subsection (4).
- (6) It shall be the duty of OFCOM to publish a notification setting out – 30
- (a) the times at which the register is for the time being available for public inspection; and
 - (b) the fees that must be paid for, or in connection with, an inspection of the register.
- (7) The publication of a notification under subsection (6) must be a publication, in such manner as OFCOM consider appropriate for bringing it to the attention of the persons who, in their opinion, are likely to be affected by it, 35

85 Restrictions and conditions subject to which code applies

- (1) Where the electronic communications code is applied in a person’s case by a direction given by OFCOM, that code shall have effect in that person’s case subject to such restrictions and conditions as may be contained in regulations made by the Secretary of State. 40

- (2) In exercising his power to make regulations under this section it shall be the duty of the Secretary of State to have regard to each of the following –
- (a) the duties imposed on OFCOM by sections 3 and 4;
 - (b) the need to protect the environment and, in particular, to conserve the natural beauty and amenity of the countryside; 5
 - (c) the need to ensure that highways are not damaged or obstructed, and traffic not interfered with, to any greater extent than is reasonably necessary;
 - (d) the need to encourage the sharing of the use of electronic communications apparatus; 10
 - (e) the need to secure that a person in whose case the code is applied will be able to meet liabilities arising as a consequence of –
 - (i) the application of the code in his case; and
 - (ii) any conduct of his in relation to the matters with which the code deals. 15
- (3) The power of the Secretary of State to provide by regulations for the restrictions and conditions subject to which the electronic communications code has effect shall include power to provide for restrictions and conditions which are framed by reference to any one or more of the following –
- (a) the making of a determination in accordance with the regulations by a person specified in the regulations; 20
 - (b) the giving of a consent or approval by a person so specified; or
 - (c) the opinion of any person.
- (4) Before making any regulations under this section, the Secretary of State must consult – 25
- (a) OFCOM; and
 - (b) such other persons as he considers appropriate.

86 Enforcement of restrictions and conditions

- (1) Where OFCOM determine that there are reasonable grounds for believing that a person in whose case the electronic communications code applies is contravening, or has contravened, a requirement imposed by virtue of any restrictions or conditions under section 85, they may give him a notification under this section. 30
- (2) A notification under this section is one which –
- (a) sets out the determination made by OFCOM; 35
 - (b) specifies the requirement and the contravention in respect of which that determination has been made; and
 - (c) specifies the period during which the person notified has an opportunity of doing the things specified in subsection (3).
- (3) Those things are – 40
- (a) making representations about the matters notified;
 - (b) complying with any notified requirement of which he remains in contravention; and
 - (c) remedying the consequences of any contravention specified in the notification. 45

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- (4) Subject to subsections (5) to (7), the period for the doing of those things that is specified in a notification under this section must be the period of one month beginning with the day after the day on which the notification was given.
- (5) OFCOM may, if they think fit, allow a longer period for the doing of the things mentioned in subsection (3) either – 5
- (a) by specifying a longer period in the notification; or
 - (b) by subsequently, on one or more occasions, extending the specified period.
- (6) The person notified shall have a shorter period for the doing of those things if a shorter period is agreed between OFCOM and the person notified. 10
- (7) The person notified shall also have a shorter period if – 15
- (a) OFCOM have reasonable grounds for believing that the case is a case of repeated contravention;
 - (b) they have determined that, in those circumstances, a shorter period would be appropriate; and
 - (c) the shorter period has been specified in the notification.
- (8) A notification under this section – 20
- (a) may be given in respect of more than one contravention; and
 - (b) if it is given in respect of a continuing contravention, may be given in respect of any period during which the contravention has continued.
- (9) Where a notification under this section has been given to any person in respect of a contravention of a particular requirement, OFCOM may give a further notification in respect of a contravention of that requirement if, and only if – 25
- (a) the contravention is one occurring after the time of the giving of the earlier notification;
 - (b) the subsequent notification is in respect of so much of a period during which the contravention in question was continuing as falls after any period to which the earlier notification relates; or
 - (c) the earlier notification has been withdrawn without a penalty having been imposed in respect of the notified contravention. 30
- (10) For the purposes of this section a contravention is a repeated contravention, in relation to any notification with respect to that contravention if – 35
- (a) a previous notification under this section has been given in respect of the same contravention or in respect of another contravention of the same requirement; and
 - (b) the subsequent notification was given no more than twelve months after the making by OFCOM of a determination for the purposes of section 87(2) or 88(2) that the contravention to which the earlier notification related did occur.
- 87 Enforcement notification for contravention of code restrictions** 40
- (1) This section applies where –
- (a) a person (“the notified provider”) has been given a notification under section 86;
 - (b) OFCOM have allowed the notified provider an opportunity of making representations about the matters notified; and 45
 - (c) the period allowed for the making of the representations has expired.

- (2) OFCOM may give the notified provider an enforcement notification if they are satisfied –
 - (a) that he is or has been in contravention, in any of the respects notified, of a requirement imposed by virtue of any restrictions or conditions under section 85; and 5
 - (b) that he has not himself, during the period allowed under section 86, taken all such steps as they consider appropriate –
 - (i) for complying with that requirement; and
 - (ii) for remedying the consequences of the notified contravention of that requirement. 10
- (3) An enforcement notification is a notification which imposes one or more of the following requirements on the notified provider –
 - (a) a requirement to take such steps for complying with the notified requirement as may be specified in the notification;
 - (b) a requirement to take such steps for remedying the consequences of the notified contravention as may be so specified. 15
- (4) A decision of OFCOM to give an enforcement notification to any person –
 - (a) must be notified by them to that person, together with the reasons for the decision, no later than one week after it is taken; and
 - (b) must fix a reasonable period for the making of the payment required by the notification. 20
- (5) It shall be the duty of a person to whom an enforcement notification has been given to comply with it.
- (6) That duty shall be enforceable in civil proceedings by OFCOM for an injunction, for specific performance of a statutory duty under section 45 of the Court of Session Act 1988 (c. 36), or for any other appropriate relief. 25

88 Penalties for contravention of code restrictions

- (1) This section applies (in addition to section 87) where –
 - (a) a person (“the notified provider”) has been given a notification under section 86; 30
 - (b) OFCOM have allowed the notified provider an opportunity of making representations about the matters notified; and
 - (c) the period allowed for the making of the representations has expired.
- (2) OFCOM may impose a penalty on the notified provider if –
 - (a) he has been in contravention, in any of the respects notified, of a condition specified in his notification under section 86; and 35
 - (b) he has not, during the period allowed under that section, taken all such steps as they consider appropriate –
 - (i) for complying with the notified requirement; and
 - (ii) for remedying the consequences of the notified contravention of that requirement. 40
- (3) Where a notification under section 86 relates to more than one contravention, a separate penalty may be imposed in respect of each contravention.
- (4) Where such a notification relates to a continuing contravention, no more than one penalty may be imposed under this section in respect of the period specified in the notification during which that contravention continued. 45

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- (5) OFCOM may also impose a penalty on the notified provider if he has contravened, or is contravening, any requirement of an enforcement notification.
- (6) The amount of a penalty imposed under this section is to be such amount not exceeding £10,000 as OFCOM, having regard to the matters mentioned in subsection (7), determine to be – 5
- (a) appropriate; and
 - (b) proportionate to the matter in respect of which it is imposed.
- (7) Those matters are –
- (a) any representations made to OFCOM by the notified provider; and 10
 - (b) any steps taken by him towards complying with the conditions contraventions of which have been notified to him under section 86; and
 - (c) any steps taking by him for remedying the consequences of those contraventions. 15
- (8) Where OFCOM impose a penalty on a person under this section they shall –
- (a) within one week of making their decision to impose the penalty, notify that person of that decision and of their reasons for that decision; and
 - (b) in that notification, fix a reasonable period after it is given as the period within which the penalty is to be paid. 20
- (9) A penalty imposed under this section –
- (a) must be paid to OFCOM; and
 - (b) if not paid within the period fixed by them, is to be recoverable by OFCOM accordingly.
- (10) The Secretary of State may by order amend this section so as to substitute a different maximum penalty for the maximum penalty for the time being specified in subsection (6). 25

89 Suspension of application of code

- (1) If –
- (a) the electronic communications code has been applied by a direction under section 82 in any person’s case, and 30
 - (b) OFCOM give a direction under section 33, 79 or 106 for the suspension or restriction of that person’s entitlement to provide an electronic communications network, or a part of such a network,
- OFCOM may, to the extent allowed by subsection (2), suspend the application in that person’s case of the electronic communications code. 35
- (2) The extent, in any persons’s case, of a suspension under subsection (1) must not go beyond the application of the code for the purposes of so much of an electronic communications network as that person is prohibited from providing by virtue of the suspension or restriction of his entitlement to provide such a network, or part of a network. 40
- (3) If –
- (a) the electronic communications code has been applied by a direction under section 82 in any person’s case, and

- (b) that person is a person in whose case there have been repeated and serious contraventions of requirements imposed by virtue of any restrictions or conditions under section 85,
OFCOM may, to the extent specified in subsection (4), suspend the application in that person’s case of the electronic communications code 5
- (4) The extent, in any persons’s case, of a suspension under subsection (3) must not go beyond the following applications of the code in his case –
 - (a) its application for the purposes of electronic communications networks, or any parts of such a network, which are not yet in existence at the time of the suspension; and 10
 - (b) its application for the purposes of so much of any other network or part of a network as is not a network or part the provision of which would have to cease if the application of the code for the purposes of that network or part were suspended.
- (5) A suspension under this section of the application of the code in any person’s case must be by a direction given to that person by OFCOM. 15
- (6) The statement required by section 83(8) to be included, in the case of a direction for the purposes of this section, in the statement of OFCOM’s proposal is a statement of their proposal to suspend the application of the code.
- (7) A suspension of the application of the electronic communications code in any person’s case – 20
 - (a) shall cease to have effect if the relevant suspension or restriction ceases to have effect; but
 - (b) subject to that shall continue in force until such time (if any) as it is withdrawn by OFCOM. 25
- (8) In subsection (7) the reference to the relevant suspension or restriction, in relation to a suspension of the application of the electronic communications code, is a reference to the suspension or restriction of an entitlement to provide an electronic communications network, or part of such a network, which is the suspension or restriction by reference to which the application of the code was suspended under subsection (1). 30
- (9) Subject to subsection (10), where the application of the electronic communications code is suspended in a person’s case, he shall not, while it is so suspended, be entitled to exercise any right conferred on him by or by virtue of the code. 35
- (10) The suspension, in a person’s case, of the application of the electronic communications code does not, except so far as otherwise provided by a scheme contained in an order under section 92 –
 - (a) affect (as between the original parties to it) any agreement entered into for the purposes of the code or any agreement having effect in accordance with it; 40
 - (b) affect anything done under the code before the suspension of its application; or
 - (c) require the removal of, or prohibit the use of, any apparatus lawfully installed on, in or over any premises before that suspension. 45

90 Modification and revocation of application of code

- (1) OFCOM may at any time modify the terms on which, by virtue of section 82(4), the code is applied in a person's case.
- (2) OFCOM may revoke any direction applying the electronic communications code in any person's case if an application for the revocation has been made made by that person. 5
- (3) If it at any time appears to OFCOM that a person in whose case the electronic communications code has been applied is not the provider of any electronic communications network for the purposes of which the code applies, OFCOM may revoke the direction applying the code in his case. 10
- (4) Any modification or revocation under this section shall be by a further direction under section 82 to the person in whose case the electronic communications code has been applied by the direction being modified or revoked.
- (5) The matters required by section 83(8) to be included, in the case of a direction for the purposes of this section, in the statement of OFCOM's proposal are whichever of the following is applicable – 15
 - (a) a statement of their proposal to modify terms imposed under section 82(4);
 - (b) a statement of their proposal to revoke the direction applying the code. 20

91 Notification of cessation by person to whom code applies

- (1) This section applies where –
 - (a) the electronic communications code has been applied by a direction under section 82 in the case of any person; and
 - (b) that person provides an electronic communications network which is not of a description designated for the purposes of section 23. 25
- (2) If that person ceases to provide that network, he must notify OFCOM of that fact.
- (3) A notification under this section must be given within such period and in such manner as may be required by OFCOM. 30
- (4) OFCOM may impose a penalty on a person who fails to comply with any requirement imposed by or under this section.
- (5) The amount of a penalty imposed on a person under this section is to be such amount not exceeding £1,000 as OFCOM may determine to be both – 35
 - (a) appropriate; and
 - (b) proportionate to the matter in respect of which it is imposed.
- (6) Where OFCOM impose a penalty on a person under this section, they shall –
 - (a) within one week of making their decision to impose the penalty, notify that person of that decision and of their reasons for that decision; and
 - (b) in that notification, fix a reasonable period after it is given as the period within which the penalty is to be paid. 40
- (7) A penalty imposed under this section –
 - (a) must be paid to OFCOM; and

- (b) if not paid within the period fixed by them, is to be recoverable by OFCOM accordingly.
- (8) The Secretary of State may by order amend this section so as to substitute a different maximum penalty for the maximum penalty for the time being specified in subsection (5).

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92 Transitional schemes on cessation of application of code

- (1) Where it appears to OFCOM –
 - (a) that the electronic communications code has ceased or is to cease to apply, to any extent, in the case of any person (“the former operator”),
 - (b) that it has ceased or will cease so to apply for either of the reasons specified in subsection (2), and
 - (c) that it is appropriate for transitional provision to be made in connection with it ceasing to apply in the case of the former operator,
 they may, by order, make a scheme containing any such transitional provision as they think fit in that case.
- (2) Those reasons are –
 - (a) the suspension by a direction under section 89 of the application of the code in the former operator’s case;
 - (b) the revocation or modification of the direction applying the code in his case.
- (3) A scheme contained in an order under this section may, in particular –
 - (a) impose any one or more obligations falling within subsection (4) on the former operator;
 - (b) provide for those obligations to be enforceable in such manner (otherwise than by criminal penalties) and by such persons as may be specified in the scheme;
 - (c) authorise the retention of apparatus on any land pending its subsequent use for the purposes of an electronic communications network or electronic communications service to be provided by any person;
 - (d) provide for the transfer to such persons as may be specified in, or determined in accordance with, the scheme of any rights or liabilities arising out of any agreement or other obligation entered into or incurred in pursuance of the code by the former operator;
 - (e) provide for the purposes of any provision contained in the scheme by virtue of any of the preceding paragraphs for such questions arising under the scheme as are specified in the scheme, or are of a description so specified, to be referred to, and determined by, OFCOM.
- (4) Those obligations are –
 - (a) an obligation to remove anything installed in pursuance of any right conferred by or in accordance with the code,
 - (b) an obligation to restore land to its condition before anything was done in pursuance of any such right, or
 - (c) an obligation to pay the expenses of any such removal or restoration.
- (5) Section 86 shall apply in relation to the requirements imposed by virtue of a scheme contained in an order under this section as it applies in relation to any

requirement imposed by virtue of any restrictions or conditions under section 85.

- (6) Section 255 applies to the power of OFCOM to make an order under this section.
- (7) A statutory instrument containing an order under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament. 5

93 Power to give assistance in relation to certain proceedings

- (1) This section applies where any actual or prospective party to any proceedings falling within subsection (2) (other than the operator, within the meaning of the electronic communications code) applies to OFCOM for assistance under this section in relation to those proceedings. 10
- (2) The proceedings falling within this subsection are any actual or prospective proceedings in which there falls to be determined any question arising under, or in connection with –
 - (a) the electronic communications code as applied in any person’s case by a direction under section 82; or
 - (b) any restriction or condition subject to which that code applies. 15
- (3) OFCOM may grant the application if, on any one or more of the following grounds, they think fit to do so –
 - (a) on the ground that the case raises a question of principle; 20
 - (b) on the ground that it is unreasonable, having regard to the complexity of the case or to any other matter, to expect the applicant to deal with the case without assistance under this section;
 - (c) by reason of any other special consideration.
- (4) Assistance by OFCOM under this section may include – 25
 - (a) giving advice;
 - (b) procuring or attempting to procure the settlement of the matter in dispute;
 - (c) arranging for the giving of advice or assistance by a solicitor or counsel;
 - (d) arranging for representation by a solicitor or counsel, including such assistance as is usually given by a solicitor or counsel – 30
 - (i) in the steps preliminary or incidental to any proceedings; or
 - (ii) in arriving at, or giving effect to, any compromise to avoid any proceedings or to bring them to an end;
 - (e) any other form of assistance which OFCOM may consider appropriate; 35
- (5) Nothing in subsection (4)(d) shall be taken to affect the law and practice regulating the descriptions of persons who may appear in, conduct or defend any proceedings, or who may address the court in any proceedings.
- (6) In so far as expenses are incurred by OFCOM in providing the applicant with assistance under this section, the recovery of those expenses (as taxed or assessed in such manner as may be prescribed by rules of court) shall constitute a first charge for the benefit of OFCOM – 40
 - (a) on any costs or expenses which (whether by virtue of a judgment or order of a court, or an agreement or otherwise) are payable to the applicant by any other person in respect of the matter in connection with which the assistance is given; and 45

- (b) so far as relates to any costs or expenses, on his rights under any compromise or settlement arrived at in connection with that matter to avoid any proceedings or to bring them to an end.
- (7) A charge conferred by subsection (6) is subject to –
 - (a) any charge imposed by section 10(7) of the Access to Justice Act 1999 (c. 22) and any provision made by or under Part 1 of that Act for the payment of any sum to the Legal Services Commission; 5
 - (b) any charge or obligation for payment in priority to other debts under the Legal Aid (Scotland) Act 1986 (c. 47); or
 - (c) any charge under the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 (S.I. 1981/228 (N.I. 8)). 10

94 Power to require information for the purposes of s. 93

- (1) OFCOM may, for the purposes of section 93, by a notification given in such manner as they consider appropriate –
 - (a) require any person to provide OFCOM, or a person appointed by them for the purpose, with any documents that are specified or described in the notification and are in that person’s custody or under his control; or 15
 - (b) require any person carrying on any business to provide OFCOM with such information as may be specified or described in the notification.
- (2) A requirement under this section to provide any documents or information – 20
 - (a) shall, in the case of a requirement to provide a document, be a requirement, to provide at a time and place specified in the notification;
 - (b) shall, in the case of a requirement to provide information, be a requirement to provide it at the time and in the manner and form specified in the notification. 25
- (3) No person shall be compelled under this section –
 - (a) to produce any documents which he could not be compelled to produce in civil proceedings before the court; or
 - (b) in complying with any requirement to provide information, to provide any information which he could not be compelled to give in evidence in any such proceedings. 30
- (4) If a person makes default in complying with a notification under subsection (1) of this section, the court, on the application of OFCOM, may make such order as they think fit for requiring the default to be made good.
- (5) An order under subsection (4) may provide that all the costs or expenses of and incidental to the application shall be borne – 35
 - (a) by the person in default; or
 - (b) by any officers of a company or other association in default who are responsible for the default of the company or association.
- (6) In this section “the court” means – 40
 - (a) in relation to England and Wales and Northern Ireland, the High Court; and
 - (b) in relation to Scotland, the Court of Session.

95 Offences in connection with provision of information under s. 94

- (1) A person who refuses or, without reasonable excuse, fails to do anything duly required of him by a notification under section 94(1) is guilty of an offence.
- (2) A person guilty of an offence under subsection (1) shall be liable, on summary conviction, to a fine not exceeding level 5 on the standard scale. 5
- (3) For the purposes of subsection (1) the circumstances that shall constitute a reasonable excuse for a failure by any person to provide OFCOM with information in pursuance of a requirement under section (1)(b) of section 94 shall include that it was not reasonably practicable for him to comply with the request within the period specified by OFCOM. 10
- (4) Subsection (3) makes the circumstances specified in that subsection a reasonable excuse only if the person in question has taken all reasonable steps to provide the required information after the end of the specified period.
- (5) A person is guilty of an offence if –
 - (a) he intentionally alters, suppresses or destroys any document which he has been required by a notification under this section to produce, or
 - (b) in providing any estimate, return or other information required of him by a notification under this section, he –
 - (i) makes any statement which he knows to be false in a material particular; or 20
 - (ii) recklessly makes any statement which is false in a material particular.
- (6) A person guilty of an offence under subsection (5) shall be liable –
 - (a) on summary conviction, to a fine not exceeding the statutory maximum; 25
 - (b) on conviction on indictment, to a fine.

Customer consultation and representation

96 Customer consultation

- (1) It shall be the duty of OFCOM to establish and maintain effective arrangements for consulting –
 - (a) the customers of communications providers, and
 - (b) the customers of persons who make associated facilities available, about the carrying out by OFCOM of OFCOM's functions. 30
- (2) Those arrangements shall include the establishment and maintenance of a panel of persons (in this Act referred to as “the Consumer Panel”) to advise OFCOM, and such other persons as the Panel think fit, about the interests of domestic and small business customers in relation to the following matters –
 - (a) the provision of electronic communications networks and electronic communications services;
 - (b) the making available of associated facilities; 40
 - (c) the handling of complaints made by their customers to communications providers or to persons who make such facilities available;
 - (d) the resolution of disputes between their customers and such providers or persons who make such facilities available; 45

- (e) the provision of remedies and redress in respect of matters that form the subject of such complaints or disputes;
 - (f) the information about service standards and the rights of customers that is to be made available to their customers by communications providers and persons who make associated facilities available; 5
 - (g) any other matter appearing to OFCOM to be necessary for securing effective protection for the customers of such providers of such persons.
 - (3) The Consumer Panel, in addition to giving the advice mentioned in subsection (2), may – 10
 - (a) at the request of OFCOM, carry out research for OFCOM in relation to any of the matters in relation to which OFCOM have functions under section 12;
 - (b) make arrangements for the carrying out of research into such other matters appearing to the Panel to be relevant to the carrying out of the Panel’s functions as the Panel think fit; 15
 - (c) give advice to OFCOM in relation to any matter referred to the Panel by OFCOM for advice;
 - (d) publish such information about the advice they give, about the carrying out of the Panel’s other functions and about the results of any research carried out by them or on their behalf, as the Panel think fit. 20
 - (4) It shall be the duty of OFCOM, in the carrying out of their functions, to consider and, to such extent as they think appropriate, to have regard to –
 - (a) any advice given to OFCOM by the Consumer Panel; and
 - (b) any results notified to OFCOM of any research undertaken by that Panel. 25
 - (5) It shall also be the duty of OFCOM (subject to subsection 96) –
 - (a) to provide the Consumer Panel with all such information as, having regard, in particular, to the need to preserve commercial confidentiality, OFCOM consider appropriate to disclose to the Panel for the purpose of enabling the Panel to carry out their functions; and 30
 - (b) to provide the Panel with all such further information as the Panel may require.
 - (6) OFCOM shall not be required to provide information by virtue of subsection (5)(b) if, having regard to – 35
 - (a) the need to preserve commercial confidentiality, and
 - (b) any other matters that appear to OFCOM to be relevant,it is reasonable for OFCOM to refuse to disclose it.
 - (7) It shall be the duty of OFCOM, in the case of any advice or opinion received from and published by the Panel which OFCOM propose to disregard in whole or in part, or with which OFCOM disagree in whole or in part – 40
 - (a) to ensure that the Panel know OFCOM’s reasons for disregarding or disagreeing with the Panel’s advice or opinion; and
 - (b) to ensure that those reasons are or have been published in such manner as OFCOM consider appropriate for bringing them to the attention of persons who are aware of the Panel’s advice or opinion. 45
 - (8) In this section “domestic and small business customer” in relation to a communication provider or person whom makes associated facilities available means, means any customer of that provider or person who is neither –

- (a) himself a communications provider or a person who makes associated facilities available; nor
- (b) a person who is such a customer in respect of an undertaking carried on by him for which more than fifty individuals work (whether as employees or volunteers or otherwise).

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97 Membership etc. of the Consumer Panel

- (1) The members of the Consumer Panel shall be appointed by OFCOM and shall comprise a chairman and such other members as OFCOM may determine.
- (2) The approval of the Secretary of State shall be required for the appointment of any person to be the chairman or to be another member of the Panel. 10
- (3) In appointing persons to be members of the Consumer Panel, OFCOM shall secure, so far as practicable, that, for each of the following parts of the United Kingdom –
 - (a) England,
 - (b) Scotland, 15
 - (c) Wales, and
 - (d) Northern Ireland,
 there is a different member of the Panel capable of representing the interests and opinions of persons living in that part of the United Kingdom.
- (4) In appointing persons to be members of the Consumer Panel OFCOM shall also secure, so far as practicable, that the Panel are able to give informed advice about matters referable to each of the following –
 - (a) the interests of persons living in rural areas;
 - (b) the interests of persons living in urban areas;
 - (c) the interests of disadvantaged persons, persons with low incomes and persons with disabilities; and 25
 - (d) the interests of the elderly;
- (5) It shall be the duty of the Consumer Panel, in carrying out their functions, to have regard to the following interests –
 - (a) the interests of persons from the different parts of the United Kingdom; and 30
 - (b) the interests specified in subsection (4).
- (6) A person shall be disqualified from being the chairman or a member of the Consumer Panel if he is a member or employee of OFCOM.
- (7) The chairman and every member of the Consumer Panel – 35
 - (a) shall be appointed for a fixed period specified in the terms of his appointment but shall be eligible for re-appointment at the end of that period; and
 - (b) may at any time be removed from the panel by a notice given by OFCOM with the approval of the Secretary of State 40
- (8) OFCOM may pay to the chairman and to any other member of the Consumer Panel such remuneration and allowances as OFCOM consider appropriate.

Information provisions

98 Information requirements for enforcement of Chapter 1

- (1) OFCOM may require any person falling within subsection (2) to provide OFCOM with all such information as they may require for any one or more of the purposes mentioned in subsection (3). 5
- (2) The persons falling within this subsection are –
 - (a) a communications provider;
 - (b) a person who has been a communications provider;
 - (c) a person who makes, or has made, any associated facilities available to others; 10
 - (d) a person, other than a communications provider, to whom a universal service condition applies or has applied.
- (3) Those purposes are –
 - (a) ascertaining whether any relevant contravention has occurred or is occurring; 15
 - (b) ascertaining whether any provision falling within subsection (5) which is for the time being in force continues to be effective for the purpose for which it was made;
 - (c) ascertaining or verifying the charges payable by that person under section 29; 20
 - (d) ascertaining or verifying any amounts payable by virtue of a condition falling within section 38(1)(e);
 - (e) making a designation in accordance with any regulations under section 51;
 - (f) carrying out any review under section 51 or 55. 25
- (4) A relevant contravention for the purposes of subsection (3)(a) is a contravention of –
 - (a) a condition set under section 35;
 - (b) a requirement imposed by virtue of any restrictions or conditions under section 85; or 30
 - (c) a requirement imposed by a scheme under section 92.
- (5) A provision falls within this subsection to the extent that it –
 - (a) is contained in a general condition and relates to the quality of service provided by a communications provider;
 - (b) is contained in a general condition and requires an allocation of particular telephone numbers to be transferred from one communications provider to another in the circumstances provided for in the conditions; 35
 - (c) is contained in a universal service condition and is made by virtue of any of subsections (4) to (8) of section 52; or 40
 - (d) is contained in an SMP condition and makes provision in relation to a relevant connection facility (within the meaning of section 71) by means of which the end-user of an electronic communications service provided by means of an electronic communications network designates in advance the selection he is to be assumed to have made where he makes no separate selection on a particular occasion. 45

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- (6) OFCOM may require any communications provider, or any person who makes associated facilities available to others, to provide OFCOM with all such information as they may require for any one or more of the purposes specified in subsection (7).
- (7) Those purposes are – 5
- (a) the carrying out, for the benefit of those with an interest and with a view to publication, of comparative overviews of the quality and price of the services provided by communications providers;
 - (b) the carrying out, for the benefit of those with an interest and with a view to publication, of comparative overviews of the quality and price of the facilities provided by those persons; 10
 - (c) the carrying out of market analyses in accordance with, or for the purposes of, any provision of this Chapter;
 - (d) the carrying out of market analyses for the purposes of any Community obligation; 15
 - (e) statistical purposes.
- (8) The reference in subsection (7) to those with an interest is a reference to persons who –
- (a) are the customers of communications providers or of persons who make associated facilities available; or 20
 - (b) otherwise than as such customers, make use of electronic communications networks, electronic communications services or associated facilities.
- (9) A person required to provide information under this section must provide it in such manner and within such reasonable period as may be specified by OFCOM. 25
- (10) The powers in this section are subject to the limitations in section 99.

99 Restriction on imposing information requirements

- (1) This section limits the purposes for which information may be required under section 98. 30
- (2) OFCOM shall not require the provision of any information for the purpose of ascertaining whether a contravention of any general condition has occurred, or is occurring, unless –
- (a) the requirement is imposed for the purpose of investigating a matter about which OFCOM have received a complaint; 35
 - (b) the requirement is imposed for the purposes of an investigation that OFCOM have decided to carry out into whether or not the general condition in question has been complied with;
 - (c) the condition in question is one which OFCOM have reason to suspect is one that has been or is being contravened; or 40
 - (d) the condition in question is one falling within section 38(1)(e).
- (3) OFCOM shall not require the provision of information from any person for the purpose of –
- (a) making a designation in accordance with regulations under section 51, or 45
 - (b) carrying out any review under that section or section 55,

unless that person is a person to whom a universal service condition applies or a person whom OFCOM propose to designate as a person to whom universal service conditions are applicable.

- (4) OFCOM shall not require the provision of any information except –
 - (a) by a demand for the information that sets out OFCOM’s reasons for requiring the information; and
 - (b) where the making of a demand for that information is proportionate to the use to which the information is to be put in the carrying out of OFCOM’s functions.
- (5) The reasons for requiring information for a purpose mentioned in section 98(7)(e) must define the statistical purposes for which the information is required.

100 Notification of contravention of information requirements

- (1) Where OFCOM determine that there are reasonable grounds for believing that a person is contravening, or has contravened, a requirement imposed under section 98, they may give that person a notification under this section.
- (2) A notification under this section is one which –
 - (a) sets out the determination made by OFCOM;
 - (b) specifies the requirement and contravention in respect of which that determination has been made; and
 - (c) specifies the period during which the person notified has an opportunity of doing the things specified in subsection (3).
- (3) Those things are –
 - (a) making representations about the matters notified; and
 - (b) complying with any notified requirement of which he remains in contravention.
- (4) Subject to subsections (5) to (7), the period for the doing of those things that is specified in a notification under this section must be the period of one month beginning with the day after the day on which the notification was given.
- (5) OFCOM may, if they think fit, allow a longer period for the doing of the things mentioned in subsection (3) either –
 - (a) by specifying a longer period in the notification; or
 - (b) by subsequently, on one or more occasions, extending the specified period.
- (6) The person notified shall have a shorter period for the doing of those things if a shorter period is agreed between OFCOM and the person notified.
- (7) The person notified shall also have a shorter period if –
 - (a) OFCOM have reasonable grounds for believing that the case is a case of repeated contravention;
 - (b) they have determined that, in those circumstances, a shorter period would be appropriate; and
 - (c) the shorter period has been specified in the notification.
- (8) A notification under this section –
 - (a) may be given in respect of more than one contravention; and

- (b) if it is given in respect of a continuing contravention, may be given in respect of any period during which the contravention has continued.
- (9) Where a notification under this section has been given to any person in respect of a contravention of a particular requirement, OFCOM may give a further notification in respect of a contravention of that requirement if, and only if – 5
 - (a) the contravention is one occurring after the time of the giving of the earlier notification;
 - (b) the subsequent notification is in respect of so much of a period during which the contravention in question was continuing as falls after any period to which the earlier notification relates; or 10
 - (c) the earlier notification has been withdrawn without a penalty having been imposed in respect of the notified contravention.
- (10) For the purposes of this section a contravention is a repeated contravention, in relation to any notification with respect to that contravention if – 15
 - (a) a previous notification under this section has been given in respect of the same contravention or in respect of another contravention of the same requirement; and
 - (b) the subsequent notification was given no more than twelve months after the making by OFCOM of a determination for the purposes of section 101(2) that the contravention to which the earlier notification related did occur. 20

101 Penalties for contravening information requirement

- (1) This section applies where – 25
 - (a) a person (“the notified person”) has been given a notification under section 100;
 - (b) OFCOM have allowed the notified person an opportunity of making representations about the matters notified; and
 - (c) the period allowed for the making of the representations has expired.
- (2) OFCOM may impose a penalty on the notified person if – 30
 - (a) they are satisfied that he has been in contravention, in any of the respects notified, of the requirement notified under section 100; and
 - (b) he has not, during the period allowed under that section, complied with the notified requirement.
- (3) Where a notification under section 100 relates to more than one contravention, a separate penalty may be imposed in respect of each contravention. 35
- (4) Where such a notification relates to a continuing contravention, no more than one penalty may be imposed in respect of the period specified in the notification during which that contravention continued.
- (5) The amount of a penalty imposed under this section is to be such amount not exceeding £50,000 as OFCOM, having regard to the matters mentioned in subsection (6), determine to be both – 40
 - (a) appropriate; and
 - (b) proportionate to the matter in respect of which it is imposed.
- (6) Those matters are – 45
 - (a) any representations made to OFCOM by the notified person; and

- (b) any steps taken by him towards complying with the requirements contraventions of which have been notified to him under section 100.
 - (7) Where OFCOM impose a penalty on a person under this section, they shall –
 - (a) within one week of making their decision to impose the penalty, notify that person of that decision and of their reasons for that decision; and 5
 - (b) in that notification, fix a reasonable period after it is given as the period within which the penalty is to be paid.
 - (8) A penalty imposed under this section –
 - (a) must be paid to OFCOM; and
 - (b) if not paid within the period fixed by them, is to be recoverable by OFCOM accordingly. 10
 - (9) The Secretary of State may by order amend this section so as to substitute a different maximum penalty for the maximum penalty for the time being specified in subsection (5).
- 102 Suspending or restricting entitlement for information contraventions 15**
 - (1) OFCOM may give a direction under this section to a person who is a communications provider or makes associated facilities available (“the contravening provider”) if they are satisfied –
 - (a) that he is or has been in serious and repeated contravention of requirements imposed under section 98; 20
 - (b) that the imposition of penalties under section 101 has failed to secure compliance by that person with the requirements so imposed on him; and
 - (c) that the giving of the direction is both appropriate and proportionate to the contraventions in respect of which it is imposed. 25
 - (2) A direction under this section is –
 - (a) a direction that the entitlement of the contravening provider to provide electronic communications networks, electronic communications services or associated facilities, or two or more of them, is suspended (either generally or in relation to particular networks, services or facilities); or 30
 - (b) a direction that that entitlement is restricted in the respects set out in the direction.
 - (3) A direction under this section –
 - (a) must specify the networks, services and facilities to which it relates; and 35
 - (b) except so far as it otherwise provides, shall take effect for an indefinite period beginning with the time at which it is notified to the person to whom it is given.
 - (4) A direction under this section –
 - (a) in providing for the effect of a suspension or restriction to be postponed may provide for it to take effect only at a time determined by or in accordance with the terms of the direction; and 40
 - (b) in connection with the suspension or restriction contained in the direction or with the postponement of its effect, may impose such conditions on the contravening provider as appear to OFCOM to be appropriate for the purpose of protecting that provider’s customers. 45

- (5) Those conditions may include a condition requiring the making of payments by way of compensation for loss, damage or inconvenience suffered by the contravening provider's customers as a result of the direction.
- (6) Where OFCOM give a direction under this section, they shall, as soon as practicable after doing so, provide that person with an opportunity of – 5
 - (a) making representations about the effect of the direction; and
 - (b) proposing steps for remedying the situation.
- (7) If OFCOM consider it appropriate to do so (whether in consequence of any representations or proposals made to them under subsection (6) or otherwise), they may revoke a direction under this section – 10
 - (a) with effect from such time as they may direct;
 - (b) subject to compliance with such requirements as they may specify; and
 - (c) to such extent and in relation to such networks, services or facilities, or parts of any network, service or facility as they may determine.
- (8) For the purposes of this section there have, in any person's case, been repeated contraventions of requirements imposed under section 98 if – 15
 - (a) more than one notification under section 100 has been given to that person in respect of the same contravention or in respect of different contraventions of the same condition; and
 - (b) the latest of those notifications was given no more than twelve months after the making by OFCOM of a determination for the purposes of section 101(2) that the contravention to which the earliest notification related did occur. 20

103 Offences in connection with information requirements

- (1) A person who fails to provide information in accordance with any requirement of OFCOM under section 98 is guilty of an offence and shall be liable – 25
 - (a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to a fine.
- (2) In proceedings against any person for an offence under subsection (1) it shall be a defence for that person to show – 30
 - (a) that it was not reasonably practicable for him to comply with the request within the period specified by OFCOM; but
 - (b) that he has taken all reasonable steps to provide the required information after the end of that period. 35
- (3) A person is guilty of an offence if – 40
 - (a) in pursuance of any requirement under section 98, he provides any information that is false in any material particular; and
 - (b) at the time he provides it, he either knows it to be false or is reckless as to whether or not it is false.
- (4) A person guilty of an offence under subsection (3) shall be liable – 45
 - (a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both.
- (5) No proceedings for an offence under subsection (1) shall be brought unless –

- (a) OFCOM have given the person a notification under section 100;
- (b) the period allowed under that section for the doing of the things mentioned in subsection (3) of that section has expired without the requirement to which it relates having been complied with; and
- (c) OFCOM are satisfied that the case is not one in which it would be appropriate to impose a financial penalty under section 101. 5

104 Statement of policy on information gathering

- (1) It shall be the duty of OFCOM to prepare and publish a statement of their general policy with respect to –
 - (a) the exercise of their powers under section 98; and 10
 - (b) the uses to which they are proposing to put information obtained under that section.
- (2) OFCOM may from time to time revise that statement as they think fit.
- (3) Where OFCOM make or revise their statement of policy under this section, they shall publish that statement or, as the case may be, the revised statement in such manner as they consider appropriate for bringing it to the attention of the persons who, in their opinion, are likely to be affected by it. 15
- (4) It shall be the duty of OFCOM, in exercising their powers under section 104 to have regard to the statement for the time being in force under this section.

105 Provision of information by OFCOM 20

- (1) On application made for the purpose by any person, OFCOM must comply with any request contained in that application –
 - (a) to notify the applicant whether or not any notification is required to be submitted by him under section 23;
 - (b) to notify the applicant whether any notification submitted by him for the purposes of that section satisfies the requirements of this Chapter; 25
 - (c) to provide the applicant with such information about his rights as may be necessary for the purpose of facilitating the negotiation by him of his right to network access; or
 - (d) to provide the applicant with such information as they consider necessary to enable the applicant to apply for a direction under section 83 to be made in his case. 30
- (2) An application for the purposes of this section must be made in such manner and form as OFCOM may require.
- (3) OFCOM shall not be required to comply with a request contained in an application under this section if (without having been asked to do so) they have already given that person the notification or information for which he is asking. 35
- (4) Any notification or information which under subsection (1) must be given or provided by OFCOM must be given or provided before the end of the period of one week beginning with the day on which the application for the notification or information was made to OFCOM. 40

Special powers of the Secretary of State

106 Powers to require suspension or restriction of a provider’s entitlement

- (1) If it appears to the Secretary of State that it is necessary to do so –
 - (a) to protect the public from any threat to public safety or public health, or
 - (b) in the interests of national security,
 he may by a direction to OFCOM require them to give a direction under this subsection (3) to a person (“the relevant provider”) who provides an electronic communications network or electronic communications service or who makes associated facilities available. 5
- (2) OFCOM shall comply with a requirement of the Secretary of State under subsection (1) by giving to the relevant provider such direction under subsection (3) as they consider necessary for the purpose of complying with the Secretary of State’s direction 10
- (3) A direction under this section is –
 - (a) a direction that the entitlement of the relevant provider to provide electronic communications networks, electronic communications services or associated facilities, or two or more of them, is suspended (either generally or in relation to particular networks, services or facilities); or 15
 - (b) a direction that that entitlement is restricted in the respects set out in the direction. 20
- (4) A direction under subsection (3) –
 - (a) must specify the networks, services and facilities to which it relates; and
 - (b) except so far as it otherwise provides, shall take effect for an indefinite period beginning with the time at which it is notified to the person to whom it is given. 25
- (5) A direction under subsection (3) –
 - (a) in providing for the effect of a suspension or restriction to be postponed may provide for it to take effect only at a time determined by or in accordance with the terms of the direction; and 30
 - (b) in connection with the suspension or restriction contained in the direction or with the postponement of its effect, may impose such conditions on the relevant provider as appear to OFCOM to be appropriate for the purpose of protecting that provider’s customers.
- (6) Those conditions may include a condition requiring the making of payments by way of compensation for loss, damage or inconvenience suffered by the relevant provider’s customers as a result of the direction. 35
- (7) Where OFCOM give a direction under subsection (3), they shall, as soon as practicable after doing so, provide that person with an opportunity of –
 - (a) making representations about the effect of the direction; and 40
 - (b) proposing steps for remedying the situation.
- (8) If OFCOM consider it appropriate to do so (whether in consequence of any representations or proposals made to them under subsection (7) or otherwise), they may, without revoking it, at any time modify the terms of any direction under subsection (3) in such manner as they consider appropriate. 45

- (9) If the Secretary of State considers it appropriate to do so, he may, by a direction to OFCOM, require them to revoke a direction under subsection (3).
- (10) Where OFCOM modify or revoke a direction they have given under subsection (3), they may do so –
 - (a) with effect from such time as they may direct; 5
 - (b) subject to compliance with such requirements as they may specify; and
 - (c) to such extent and in relation to such networks, services or facilities, or parts of any network, service or facility as they may determine.
- (11) It shall be the duty of OFCOM to comply with
 - (a) any requirement contained in a direction under subsection (9); and 10
 - (b) any requirement contained in that direction as to how they should exercise their powers under subsection (10) in the case of the required revocation.

107 Enforcement of directions under s. 106

- (1) A person is guilty of an offence if he provides an electronic communications network or electronic communications service, or makes available any associated facility –
 - (a) while his entitlement to do so is suspended by a direction under section 106; or 15
 - (b) in contravention of any restriction contained in such a direction. 20
- (2) A person guilty of an offence under subsection (1) shall be liable –
 - (a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to a fine.
- (3) The duty of a person to comply with a condition of a direction under section 106 shall be a duty owed to every person who may be affected by a contravention of the condition. 25
- (4) Where a duty is owed by virtue of subsection (3) to any person –
 - (a) any breach of the duty that causes that person to sustain loss or damage, and 30
 - (b) any act which by inducing a breach of the duty or interfering with its performance causes that person to sustain loss or damage and which is done wholly or partly for achieving that result,shall be actionable at the suit or instance of that person.
- (5) In any proceedings brought against any person by virtue of subsection (4)(a) it shall be a defence for that person to show that he took all reasonable steps and exercised all due diligence to avoid contravening the condition in question 35
- (6) Sections 74 to 78 apply in relation to a contravention of conditions imposed by a direction under section 106 as they apply in relation to a contravention of conditions set under section 35. 40

Abolition of telecommunications licensing etc.

108 Repeal of provisions of Telecommunications Act 1984

The following provisions of the Telecommunications Act 1984 (c. 12) shall cease to have effect –

- (a) sections 5 to 8 (licensing provisions); 5
- (b) sections 9 to 11 (public telecommunications systems);
- (c) sections 12 to 15 (modification of licences);
- (d) sections 16 to 19 (enforcement of licences); and
- (e) sections 27A to 27L (standards of performance of designated public telecommunications operators). 10

Interpretation of Chapter 1

109 Interpretation of Chapter 1

(1) In this Chapter –

- “the Access Directive” means Directive 02/19/EC of the European Parliament and of the Council on access to, and interconnection of, electronic communications networks and associated facilities; 15
- “access-related condition” means a condition set as an access-related condition under section 35;
- “allocation” and “adoption”, in relation to telephone numbers, and cognate expressions, shall be construed in accordance with section 43; 20
- “the electronic communications code” has the meaning given by section 82(1);
- “designated universal service provider” means a person who is for the time being designated under section 51 as a person to whom universal service conditions are applicable; 25
- “electronic communications apparatus” has the same meaning as in as in Schedule 2 to the Telecommunications Act 1984;
- “end-user”, in relation to a public electronic communications service means –
 - (a) a person who, otherwise than as a communications provider is a customer of the provider of that service; 30
 - (b) a person who makes use of the service otherwise than as a communications provider; or
 - (c) a person who may be authorised, by a person falling within paragraph (a), so to make use of the service; 35
- “the Framework Directive” means Directive 02/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services;
- “general condition” means a condition set as a general condition under section 35; 40
- “interconnection” shall be construed in accordance with subsection (2);
- “market power determination” means a determination for the purposes of any provision of this Chapter that a person has significant market power in an identified market for electronic communications networks, for electronic communications services or for associated facilities; 45
- “network access” shall be construed in accordance with subsection (3);

- “privileged supplier condition” means a condition set as a privileged supplier condition under section 35;
- “public communications provider” means –
- (a) the provider of a public electronic communications network;
 - (b) the provider of a public electronic communications service; or
 - (c) the person who makes available facilities that are associated facilities by reference to a public electronic communications network or an electronic communications service that is made available for use by members of the public;
- “public electronic communications network” means an electronic communications network provided wholly or mainly for the purpose of making electronic communications services available to members of the public;
- “public electronic communications service” means any electronic communications service that is provided so as to be available for use by members of the public;
- “regulatory authorities” shall be construed in accordance with subsection (5);
- “relevant international standards” means –
- (a) any standards or specifications drawn up and published in accordance with Article 17 of the Framework Directive;
 - (b) the standards and specifications adopted by European Standards Organisations;
 - (c) the international standards and recommendations adopted by –
 - (i) the International Telecommunications Union;
 - (ii) the International Organisation for Standardisation; or
 - (iii) the International Electrotechnical Committee
- “service interoperability” means interoperability between different electronic communications services;
- “significant market power” shall be construed in accordance with section 63;
- “SMP condition” means a condition set as an SMP condition under section 35;
- “telephone number” has the meaning given by section 43(6);
- “the Universal Service Directive” means Directive 02/22/EC of the European Parliament and of the Council on universal service and users’ rights relating to electronic communications networks and services;
- “universal service condition” means a condition set as a universal service condition under section 35;
- “the universal service notice” means the Secretary of State’s notice under section 50 that is for the time being in force.
- (2) In this Chapter references to interconnection are references to the linking (whether directly or indirectly by physical or logical means, or by a combination of physical and logical means) of one public electronic communications network to another for the purpose of enabling the persons using one of them to be able –
- (a) to communicate with users of the other one; or
 - (b) to make use of services provided by means of the other one (whether by the provider of that network or by another person).

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- (3) In this Chapter references to network access are references to –
- (a) interconnection of public electronic communications networks; or
 - (b) any services, facilities or arrangements which are not comprised in interconnection but are services, facilities or arrangements by means of which a communications provider or person making available associated facilities is able, for the purpose of providing an electronic communications service, to make use of anything mentioned in subsection (4);
- 5
- and references to providing network access include references to providing any such services, making available any such facilities or entering into any such arrangements.
- 10
- (4) Those things are –
- (a) any electronic communications network or electronic communications service provided by another communications provider;
 - (b) any apparatus comprised in such a network or used for the purposes of such a network or service;
 - (c) any facilities made available by another that are associated facilities by reference to any network or service (whether one provided by that provider or by another);
 - (d) any other services or facilities which are provided or made available by another person and are capable of being used for the provision of an electronic communications service.
- 15
- 20
- (5) References in this Chapter to the regulatory authorities of the other member States are references to such of the authorities of the other member States as have been notified to the European Commission as the regulatory authorities of those States for the purposes of the Framework Directive.
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- (6) For the purposes of this Chapter, where there is a contravention of any obligation that requires a person to do anything within a particular period or before a particular time that contravention shall be taken to continue after the end of that period, or after that time, until that thing is done.
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- (7) References in this Chapter to remedying the consequences of a contravention include references to paying an amount to any person by way of compensation for loss or damage suffered by that person or in respect of any inconvenience to which he has been put.
- (8) In determining for the purposes of any provision of this Chapter whether a contravention is a repeated contravention for any purposes, a notification of a contravention under any such provision shall be disregarded if it has been withdrawn before the imposition of a penalty in respect of the matters notified.
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- (9) For the purposes of this section a service is made available to members of the public if members of the public are customers, in respect of that service, of the provider of that service.
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CHAPTER 2

SPECTRUM USE

Introductory

110 General functions of OFCOM in relation to radio spectrum

- (1) It shall be a function of OFCOM – 5
 - (a) to provide such services,
 - (b) to maintain such records, and
 - (c) to give such advice in relation to the use of the electro-magnetic spectrum for wireless telegraphy,as they consider appropriate for the purpose of facilitating or managing the use of that spectrum for wireless telegraphy. 10
- (2) It shall be a function of OFCOM, in relation to the use of the electro-magnetic spectrum for wireless telegraphy –
 - (a) to provide such other services,
 - (b) to maintain such other records, and 15
 - (c) to give such further advice,as the Secretary of State may, for the purpose of securing compliance with the international obligations of the United Kingdom, require them to provide.
- (3) The services, records and advice that OFCOM may provide, maintain and give under this section include services, records and advice with respect to the use of the electro-magnetic spectrum at places outside the United Kingdom. 20
- (4) For the purpose of carrying out their functions under this section OFCOM may –
 - (a) undertake research and development work;
 - (b) undertake research into the matters mentioned in subsection (5); and 25
 - (c) arrange for the carrying out by other persons of research and development work and of research into any of those matters.
- (5) Those matters are –
 - (a) the demands for use of the electro-magnetic spectrum for wireless telegraphy in the United Kingdom; 30
 - (b) the effects, in the United Kingdom, of any such use of that spectrum;
 - (c) likely future developments in relation to those matters; and
 - (d) such other connected matters as OFCOM think fit.
- (6) OFCOM may make a grant to any person if, in their opinion, the making of the grant is likely to promote – 35
 - (a) the efficient use in the United Kingdom of the electro-magnetic spectrum for wireless telegraphy; or
 - (b) the efficient management of that use.
- (7) A grant –
 - (a) may be made to a person holding a wireless telegraphy licence or or a grant of recognised spectrum access or to any other person; and 40
 - (b) is to be made on such terms and conditions as OFCOM consider appropriate.

111 United Kingdom Plan for Frequency Authorisation

- (1) It shall be the duty of OFCOM, from time to time as they think fit, to publish a document (to be known as “the United Kingdom Plan for Frequency Authorisation”).
- (2) The plan must set out – 5
 - (a) the frequencies that, in relation to the United Kingdom, have been allocated for particular purposes for wireless telegraphy and are available for assignment; and
 - (b) the purposes for which the different frequencies have been allocated.

112 Directions with respect to the radio spectrum 10

- (1) The Secretary of State may by order give general or specific directions to OFCOM about the carrying out by OFCOM of their functions under the enactments relating to the management of the radio spectrum.
- (2) An order containing a direction under this section (other than one falling within subsection (3) or (4)) must state the purpose for which it is given. 15
- (3) The directions that may be given under this section include a direction requiring OFCOM to secure that such frequencies on the electro-magnetic spectrum as may be specified in the direction are kept available or become available –
 - (a) for such uses or descriptions of uses, or 20
 - (b) for such users or descriptions of users,as may be so specified.
- (4) The directions that may be given under this section include a direction requiring OFCOM to exercise their powers under the provisions mentioned in subsection (5) – 25
 - (a) in such cases,
 - (b) in such manner,
 - (c) subject to such restrictions and constraints, and
 - (d) with a view to achieving such purposes,as may be specified in the directions or as may be determined by the Secretary of State in accordance with the order. 30
- (5) Those provisions are –
 - (a) the proviso to section 1 of the Wireless Telegraphy Act 1949 (c. 54) (exemptions from requirement of wireless telegraphy licence);
 - (b) sections 1 to 3A of the Wireless Telegraphy Act 1998 (c. 6) (payments in respect of wireless telegraphy licences and grants of recognised spectrum access). 35
- (6) An order containing a direction under this section shall cease to have effect at the end of the period of forty days beginning with the day on which it was made unless, before the end of that period, it has been approved by a resolution of each House of Parliament. 40
- (7) For the purposes of subsection (6) –
 - (a) the order’s ceasing to have effect shall be without prejudice to anything previously done or to the making of a new order; and

- (b) in reckoning the period of forty days no account shall be taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.
- (8) This section is not to be construed as restricting the power of the Secretary of State under section 7, without the making of an order, to give a direction for any of the purposes for the time being specified in subsection (3) of that section.

113 Special duty in relation to television multiplexes

- (1) This section applies where OFCOM, in exercise of their functions under the enactments relating to the management of the radio spectrum, have determined that any frequency should be reserved for the broadcasting of television multiplex services. 10
- (2) It shall be the duty of OFCOM, in the carrying out of those functions, to exercise their powers for the purpose, so far as practicable, of conferring an entitlement falling within subsection (3) on every provider of a qualifying service. 15
- (3) An entitlement falling within this subsection is an entitlement to the use, for the broadcasting of the qualifying service by means of a television multiplex service, of digital capacity on that frequency.
- (4) Expressions which are used in this section and defined for the purposes of Part 3 of this Act in section 239 have the same meanings in this section as in that Part. 20

114 Advisory service in relation to interference

- (1) It shall be a function of OFCOM to provide a service consisting in the giving of advice and assistance to persons complaining of interference with wireless telegraphy. 25
- (2) In this section “interference”, in relation to wireless telegraphy, has the same meaning as in the Wireless Telegraphy Act 1949 (c. 54).

Recognised spectrum access

115 Grant of recognised spectrum access

- (1) This section applies where a person – 30
 - (a) is proposing to use or to continue to use a station or apparatus for wireless telegraphy in circumstances specified for the purposes of this section by regulations made by OFCOM; and
 - (b) that use –
 - (i) does not require a wireless telegraphy licence; but 35
 - (ii) will involve the emission of electro-magnetic energy (whether from a place within the United Kingdom or from a place outside the United Kingdom) with a view to reception at places in the United Kingdom or in the territorial waters adjacent to the United Kingdom. 40

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- (2) On an application made by that person, OFCOM may grant him recognised spectrum access in respect of any such use by him of anything for wireless telegraphy as may be specified in the grant.
- (3) A grant of recognised spectrum access to any person shall set out, by reference to such factors as OFCOM think fit (including, so far as they think fit, frequencies, times and places of reception and strength and type of signal), the respects in which the use of anything by that person for wireless telegraphy is recognised by the grant. 5
- (4) A grant of recognised spectrum access is made by the giving of a notification to that person containing the grant. 10
- (5) A grant of recognised spectrum access may be made subject to such restrictions and conditions as OFCOM think fit, including, in particular –
- (a) restrictions or conditions as to strength or type of signal, as to times of use and as to the sharing of frequencies;
 - (b) restrictions of, or conditions imposing prohibitions on, the transmission or broadcasting of particular matters by the person having the advantage of the grant; and 15
 - (c) conditions requiring the transmission or broadcasting of particular matters by that person.
- (6) The restrictions and conditions of a grant of recognised spectrum access to any person must not duplicate obligations already imposed on him by general conditions set under section 35. 20
- (7) Where a grant of recognised spectrum access is made subject to restrictions and conditions, the restrictions and conditions must be set out in the notification by which the grant is made. 25
- (8) Schedule 4 (which makes provision about the grant, revocation and modification of recognised spectrum access) shall have effect.
- (9) Section 255 applies to the power of OFCOM to make regulations under subsection (1).
- (10) Expressions used in this section and in the Wireless Telegraphy Act 1949 (c. 54) have the same meanings in this section as in that Act. 30

116 Effect of grant of recognised spectrum access

In carrying out –

- (a) their functions under section 1 of the Wireless Telegraphy Act 1949 (licensing of the use of the radio spectrum) with respect to the granting of wireless telegraphy licences, and 35
- (b) their functions under section 115 of this Act with respect to the making of grants of recognised spectrum access,

OFCOM shall take into account the terms of any grant of recognised spectrum access that is for the time being in force to the same extent as they would take into account a wireless telegraphy licence in equivalent terms if such a licence were already in force. 40

117 Charges in respect of grants of recognised spectrum access

- (1) The Wireless Telegraphy Act 1998 (c. 6) (which makes provision about the sums that may be charged in respect of the issue and renewal of wireless telegraphy licences etc.) shall be amended as follows.
- (2) In section 1 (charges for wireless telegraphy licences) –
 - (a) in subsection (1), after “this Act” there shall be inserted “ –
 - (a) references to a grant of recognised spectrum access are references to a grant made under section 115 of the Communications Act 2002 (c. 00) (recognised spectrum access); and
 - (b)”;
 - (b) in subsection (2), for the words from “or renewal” to “is issued” there shall be substituted “of a wireless telegraphy licence or the grant of any recognised spectrum access and, where regulations under this section so provide, subsequently at such times during the term of the licence or grant and such times in respect of its variation, modification or revocation, as may be prescribed by the regulations, there shall be paid to OFCOM by the person to whom the licence is issued or the grant made”; and
 - (c) in subsection (4), for the words from “or renewal”, where they first occur, to “the licence” there shall be substituted “of a licence or the making of a grant of recognised spectrum access, OFCOM may, on the issue of the licence or the making of the grant,”.
- (3) In section 2 (matters to be taken into account in the exercise of powers under section 1) –
 - (a) in subsection (1), for “wireless telegraphy licences of any description” there shall be substituted “any description of wireless telegraphy licence or of grant of recognised spectrum access”; and
 - (b) in subsection (2), for the words “under licences”, in each place where they occur, there shall be substituted “under and in accordance with licences and grants”.
- (4) After section 3 of that Act there shall be inserted the following section –

“3A Bidding for grants of recognised spectrum access

- (1) Having regard to the desirability of promoting the optimal use of the electro-magnetic spectrum, OFCOM may by regulations provide that, in such cases as may be specified in the regulations, applications for grants of recognised spectrum access must be made in accordance with a procedure which involves the making by the applicant of a bid specifying an amount which he is willing to pay to OFCOM in respect of the grant.
- (2) Regulations under this section may make provision with respect to the grants to which they apply and the restrictions and conditions subject to which such grants are issued; and they may, in particular –
 - (a) require the applicant’s bid to specify the amount which he is willing to pay;
 - (b) require that amount to be expressed –
 - (i) as a cash sum;

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- (ii) as a sum determined by reference to a variable (such as income attributable wholly or in part to the use of wireless telegraphy to which the grant relates);
 - (iii) as a combination of the two; or
 - (iv) (at the applicant's choice) in any one of the ways falling within the preceding sub-paragraphs that is authorised by the regulations; 5
 - (c) require that amount to be expressed in terms of –
 - (i) the making of a single payment;
 - (ii) the making of periodic payments; 10
 - (iii) a combination of the two; or
 - (iv) (at the applicant's choice) in any one of the ways falling within the preceding sub-paragraphs that is authorised by the regulations;
 - (d) specify requirements (such as, for example, technical or financial requirements, requirements relating to the use of wireless telegraphy to which the grant relates and requirements intended to restrict the holding of two or more grants of recognised spectrum access by any one person) which must be met by applicants for a grant; 15
 - (e) require any such applicant to pay a deposit to OFCOM;
 - (f) specify circumstances in which such a deposit is, or is not, to be refundable; 20
 - (g) specify matters to be taken into account by OFCOM (in addition to the bids made in accordance with the prescribed procedure) in deciding whether, or to whom, to make a grant of recognised spectrum access; 25
 - (h) specify the other restrictions and conditions subject to which any such grant is to be made; and
 - (i) make any provision referred to in section 1(3). 30
- (3) Regulations under this section shall not be construed as binding OFCOM to make a grant on the completion of the procedure provided for in the regulations except in such circumstances as may be provided for in the regulations.
- (4) A grant of recognised spectrum access made in accordance with regulations under this section shall specify either – 35
- (a) the sum or sums which in accordance with the regulations are payable in respect of the grant made in consequence of the bids made;
 - (b) the method for determining that sum or those sums; 40
- and those sums shall be paid to OFCOM by the person to whom the grant is made in accordance with the conditions of the grant.
- (5) In determining the sum or sums payable in respect of a grant made in consequence of the bids made, regard may be had to bids made for other grants of recognised spectrum access and for grants of wireless telegraphy licences. 45
- (6) Regulations under this section may provide that where a person –
- (a) makes an application for a grant of recognised spectrum access in accordance with a procedure provided for by any such regulations, but 50

- (b) subsequently refuses the grant applied for,
that person shall make such payments to OFCOM as may be
determined in accordance with the regulations by reference to bids
made for the grant.
- (7) Section 1(4) shall apply in relation to sums that will or may become
payable under regulations under this section subsequently to any grant
of recognised spectrum access as it applies in relation to sums
becoming payable subsequently to the issue of any licence.”

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118 Conversion into and from wireless telegraphy licences

- (1) OFCOM may by regulations make provision for –
 - (a) the conversion, on the application of the licence holder, of a wireless
telegraphy licence into a grant of recognised spectrum access; and
 - (b) the conversion, on the application of the holder of the grant, of a grant
of recognised spectrum access into a wireless telegraphy licence.
- (2) Section 255 applies to the power of OFCOM to make regulations under this
section.

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Crown use of the radio spectrum

119 Payments for use of radio spectrum by the Crown

- (1) The Secretary of State may, out of money provided by Parliament, make
payments to OFCOM of such amounts as he considers appropriate in respect
of –
 - (a) the establishment and use by or on behalf of the Crown, of any station
for wireless telegraphy;
 - (b) the installation and use by or on behalf of the Crown, of any apparatus
for wireless telegraphy;
 - (c) any grant of recognised spectrum access made to the Crown.
- (2) The payments made under this section shall be made at such times and, so far
as made in relation to use, in relation to such periods as the Secretary of State
considers appropriate.
- (3) Expressions used in this section and in the Wireless Telegraphy Act 1949 (c. 54)
have the same meanings in this section as in that Act.

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Exemptions and limitations

120 Limitations on authorised spectrum use

- (1) If they consider it appropriate, for the purpose of securing the efficient use of
the electro-magnetic spectrum, to impose limitations on the use of particular
frequencies, OFCOM must make an order imposing the limitations.
- (2) An order under this section may do one or both of the following –
 - (a) specify frequencies for the use of which OFCOM will grant or make
only a limited number of wireless telegraphy licences and grants of
recognised spectrum access; or

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- (b) specify uses for which, on specified frequencies, OFCOM will grant or make only a limited number of wireless telegraphy licences and grants of recognised spectrum access.
 - (3) Where OFCOM make an order under this section, it must set out the criteria which OFCOM will apply in determining in accordance with the order – 5
 - (a) the limit on the number of wireless telegraphy licences and grants of recognised spectrum access to be granted or made for the specified frequencies or uses;
 - (b) the persons to whom licences will be granted or grants of spectrum access made. 10
 - (4) OFCOM shall satisfy themselves that any criteria set out by virtue of subsection (3) are –
 - (a) objectively justifiable in relation to the frequencies or uses to which they relate;
 - (b) not such as to discriminate unduly against particular persons or against a particular description of persons; 15
 - (c) proportionate to what they are intended to achieve; and
 - (d) transparent.
 - (5) It shall be the duty of OFCOM to exercise the following powers in accordance with any order under this section – 20
 - (a) their powers under the Wireless Telegraphy Act 1949 (c. 54) and the Wireless Telegraphy Act 1998 (c. 6) with respect to the grant of licences; and
 - (b) their powers under Chapter 2 of Part 2 of this Act with respect to grants of recognised spectrum access. 25
 - (6) OFCOM shall keep under review any order for the time being in force under this section.
 - (7) It shall be the duty of OFCOM to make an order revoking or amending any provision of an order under this section if, on reviewing it, they consider it necessary to do so for the purpose of securing the efficient use of the electro-magnetic spectrum. 30
 - (8) An order under this section may make provision by reference to determinations which –
 - (a) are made from time to time by OFCOM in accordance with the provisions of such an order; and 35
 - (b) are published by them from time to time in such manner as may be provided for in such an order.
 - (9) Section 255 applies to the power of OFCOM to make an order under this section.

121 Terms etc. of wireless telegraphy licences 40

In section 1 of the Wireless Telegraphy Act 1949, after subsection (2) (terms provisions and limitations of the licence there shall be inserted –

- “(2A) Those terms, provisions and limitations may also include, in particular, any restrictions or conditions corresponding to those which, by virtue of section 115(5) of the Communications Act 2002 (conditions as to signals, time of use, sharing of frequencies and the contents of 45

transmissions and broadcasts), are capable of being included in a grant of recognised spectrum access.

- (2B) A licence under this section may be granted either –
- (a) in relation to particular station or particular apparatus; or
 - (b) in relation to any station or apparatus falling within a description specified in the licence by reference to such factors (including factors confined to the manner in which it is established, installed or used) as may be so specified. 5
- (2C) The terms, provisions and limitations of a licence granted under this section to any person must not duplicate obligations already imposed on him by general conditions set under section 35 of the Communications Act 2002 (c. 00).” 10

122 Exemption from need for wireless telegraphy licence

After section 1 of the Wireless Telegraphy Act 1949 there shall be inserted –

“1AA Exemption from need for wireless telegraphy licence 15

- (1) If OFCOM are satisfied that the condition in subsection (2) is satisfied as respects the use of stations or apparatus of any particular description, they shall make regulations under section 1 of this Act exempting the establishment, installation and use of any station or apparatus of that description from the prohibition in that section 20
- (2) That condition is that the use of stations or apparatus of that description is not likely to involve any undue interference with wireless telegraphy.”

Award and transfer of licences

123 Bidding for wireless telegraphy licences 25

- (1) Section 3 of the Wireless Telegraphy Act 1998 (c. 6) (bidding for wireless telegraphy licences) shall be amended as follows.
- (2) The following shall cease to have effect –
 - (a) in subsection (1), the words “or determined by him under” and paragraph (a) (requirement to set out procedure for bidding in a notice issued under regulations); and
 - (b) subsection (2) (matters to be included in regulations).
- (3) In subsection (3) (provision that may be contained in regulations) –
 - (a) for paragraph (a) there shall be substituted –
 - “(a) require the applicant’s bid to specify the amount he is willing to pay; 35
 - (aa) require that amount to be expressed –
 - (i) as a cash sum;
 - (ii) as a sum determined by reference to a variable (such as income attributable wholly or in part to the holding of the licence); 40
 - (iii) as a combination of the two; or

-
- (iv) (at the applicant’s choice) in any one of the ways falling within the preceding sub-paragraphs that is authorised by the regulations;
 - (ab) require that amount to be expressed in terms of –
 - (i) the making of a single payment, 5
 - (ii) the making of periodic payments;
 - (iii) a combination of the two; or
 - (iv) (at the applicant’s choice) in any one of the ways falling within the preceding sub-paragraphs that is authorised by the regulations;” 10
 - and
 - (b) the word “and” shall be inserted at the end of paragraph (f) and paragraph (h) shall cease to have effect.
 - (4) For subsection (4) (notice not to create binding obligation to grant licence) there shall be substituted – 15
 - “(4) Regulations under this section shall not be construed as binding OFCOM to grant a licence on the completion of the procedure provided for in the regulations except in such circumstances as may be provided for in the regulations.”
 - (5) In subsection (5) (licence to specify the amount payable in accordance with the applicant’s bid”), for “the sum or sums payable in accordance with the applicant’s bid for the licence” there shall be substituted “the sum or sums which in accordance with the regulations are payable in respect of the licence in consequence of the bids made”. 20
 - (6) After that subsection there shall be inserted – 25
 - “(5A) In determining the sum or sums payable in respect of a grant made in consequence of the bids made, regard may be had to bids made for other grants of licences and for grants of recognised spectrum access.
 - (5B) Regulations under this section may provide that where a person –
 - (a) makes an application for a licence in accordance with a procedure provided for by any such regulations, but 30
 - (b) subsequently refuses the licence applied for,
 that person shall make such payments to OFCOM as may be determined in accordance with the regulations by reference to bids made for the licence.” 35

124 Spectrum trading

- (1) OFCOM may by regulations authorise the transfer to another person by –
 - (a) the holder of a wireless telegraphy licence, or
 - (b) the holder of a grant of recognised spectrum access,
 of rights and obligations arising by virtue of such a licence or grant. 40
- (2) The transfers that may be authorised by regulations under this section are –
 - (a) such transfers of all or any of the rights and obligations under a licence or grant as have the effect that the rights and obligations of the person making the transfer become rights and obligations of the transferee to the exclusion of the person making the transfer; 45

- (b) such transfers of all or any those rights and obligations as have the effect that the transferred rights and obligations become rights and obligations of the transferee while continuing, concurrently, to be rights and obligations of the person making the transfer; and
 - (c) transfers falling within either of the preceding paragraphs under which the rights and obligations that are acquired by the transferee take effect –
 - (i) if they are rights and obligations under a wireless telegraphy licence, as rights and obligations under a grant of recognised spectrum access; and
 - (ii) if they are rights and obligations under such a grant, as rights and obligations under a wireless telegraphy licence.
- (3) Regulations authorising the transfer of rights and obligations under any wireless telegraphy licence or grant of recognised spectrum access may –
 - (a) authorise a partial transfer to be made by reference to such factors and apportionments, and to have effect in relation to such matters and periods, as may be described in the regulations, or as may be determined in accordance with them;
 - (b) by reference to such factors (including the terms and conditions of the licence or grant in question) as may be specified in or determined in accordance with the regulations, restrict the circumstances in which, the extent to which and the manner in which a transfer may be made;
 - (c) require the consent or approval of OFCOM for the making of a transfer;
 - (d) provide for a transfer to be effected by the surrender of a licence or grant of recognised spectrum access and the grant or making of a new one in respect of any transfer;
 - (e) confer power on OFCOM to direct that a transfer shall not be made, or shall be made only after compliance with such conditions as OFCOM may impose in accordance with the regulations;
 - (f) authorise OFCOM to require the payment to them of such sums as may be determined by or in accordance with the regulations in respect of any determination made, or consent or approval given, by OFCOM for the purposes of the regulations;
 - (g) make provision for the giving of security (whether by the giving of deposits or otherwise) in respect of sums payable in pursuance of any regulations under this section;
 - (h) make provision as to the circumstances in which any security given under any such regulations is to be returned or may be retained;
 - (i) impose requirements as to the procedure to be followed for the making of a transfer and, in particular, as to the notification about a transfer that must be given to OFCOM, or must be published, both in advance of its being made and afterwards;
 - (j) impose requirements as to the records to be kept in connection with any transfer, and as to the persons to whom such records are to be made available;
 - (k) set out the matters to be taken into account in the making of any determination under any regulations under this section.
- (4) The transfer of rights and obligations under a wireless telegraphy licence or grant of recognised spectrum access shall be void except to the extent that it is made –
 - (a) in accordance with regulations under this section; or

- (b) in accordance with any provision specified in subsection (5)
- (5) That provision is provision which –
 - (a) is contained in a wireless telegraphy licence granted before the coming into force of this section or in the first or any subsequent renewal after the coming into force of this section of a licence so granted; and 5
 - (b) allows the holder of the licence to confer the benefit of the licence on another in respect of any station or apparatus to which the licence relates.
- (6) A transfer shall also be void if it is made in contravention of any direction given by OFCOM in exercise of any power conferred by regulations under this section. 10
- (7) Section 255 applies to the power of OFCOM to make regulations under this section.

Variation and revocation of licences

125 Variation and revocation of wireless telegraphy licences 15

- (1) For section 1E of the Wireless Telegraphy Act 1949 (c. 54) (variation and revocation of licences for the provision of a telecommunication service) there shall be substituted –

“1E Variation or revocation of a licence

- (1) Where OFCOM propose to vary or revoke a wireless telegraphy licence, they shall give the person holding the licence a notification under this subsection – 20
 - (a) stating the reasons for the proposed variation or revocation; and
 - (b) specifying the period during which the person notified has an opportunity to do the things specified in subsection (2). 25
- (2) Those things are –
 - (a) making representations about the proposal; and
 - (b) if the proposal is the result of a contravention of a term, provision or limitation of the licence, complying with that term, provision or limitation. 30
- (3) Subject to subsections (4) to (6), the period for doing those things that is specified in a notification under subsection (1) must be the period of one month beginning with the day after the day on which the notification was given.
- (4) OFCOM may, if they think fit, allow a longer period for the doing of the things mentioned in subsection (2) either – 35
 - (a) by specifying a longer period in the notification; or
 - (b) by subsequently, on one or more occasions, extending the specified period.
- (5) The person notified shall have a shorter period for the doing of those things if a shorter period is agreed between OFCOM and the person notified. 40
- (6) The person notified shall also have a shorter period if –

- (a) OFCOM have reasonable grounds for believing that the case is a case of serious and repeated contravention or an urgent case;
 - (b) they have determined that, in the circumstances, a shorter period would be appropriate; and
 - (c) the shorter period has been specified in the notification. 5
- (7) A case is an urgent case if the failure to vary or revoke the licence will result in, or create an immediate risk of –
 - (a) a serious threat to the safety of the public, to public health or to national security; or
 - (b) serious economic or operational problems for persons, other than the person in contravention, who –
 - (i) use stations or apparatus for wireless telegraphy; or
 - (ii) are communications providers or make associated facilities available. 10
- (8) Subsection (1) shall not apply to any proposal to vary or revoke a licence if the proposal is made at the request or with the consent of the licence holder. 15
- (9) For the purposes of this section a contravention of a term, provision or limitation of a licence is a repeated contravention, in relation to any proposal to vary or revoke a licence, if it falls within subsection (10). 20
- (10) A contravention falls within this subsection if –
 - (a) a previous notification under subsection (1) has been given in respect of the same contravention or in respect of any other contravention of a term, provision or limitation of the same licence; and 25
 - (b) the subsequent notification under that subsection is given no more than twelve months after the making by OFCOM of a determination for the purposes of subsection (11) that the contravention to which the earlier notification related did occur.
- (11) Where OFCOM have given a notification under subsection (1) OFCOM shall, within the period of one month beginning with the end of the period for the making of representations about the proposal contained in that notification –
 - (a) decide whether or not to vary or revoke the licence in accordance with their proposal, or in accordance with that proposal but with modifications; and 30 35
 - (b) give the person holding the licence a notification of their decision.
- (12) The notification under subsection (11) –
 - (a) must be given no more than one week after the making of the decision to which it relates; and 40
 - (b) must, in accordance with that decision, either vary or revoke the licence or withdraw the proposal for a variation or revocation.
- (13) The reference in subsection (10) to a contravention of a term, provision or limitation of the same licence includes a reference to a contravention of a term, provision or limitation contained in any previous licence of which the licence in question is a direct or indirect renewal.” 45

- (2) Nothing in this section shall apply in any case in which a notice under section 1E(1) of that Act was served before the coming into force of this section.

Wireless telegraphy register

126 Wireless telegraphy register

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|---|----|
| (1) OFCOM may by regulations make provision for the establishment and maintenance of a register of relevant information. | 5 |
| (2) OFCOM shall include relevant information in the register if, and only if, it is relevant information of a description prescribed by regulations under this section. | |
| (3) Information is relevant information for the purposes of subsection (1) if it relates to— | 10 |
| (a) the issue, renewal, transfer, variation or revocation of wireless telegraphy licences; and | |
| (b) the making, renewal, transfer, modification or revocation of grants of recognised spectrum access. | 15 |
| (4) Subject to such conditions (including conditions as to payment) as may be prescribed by regulations under this section, a register established by virtue of subsection (1) shall be open to inspection by the public. | |
| (5) Section 255 applies to the power of OFCOM to make regulations under this section. | 20 |

Appeals relating to interference matters

127 Decisions under the Wireless Telegraphy Act 1949

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|---|----|
| (1) No appeal shall be brought to the tribunal established under section 9 of the Wireless Telegraphy Act 1949 (c. 54) (appeals tribunal in relation to decisions about interference) in respect of any decision made after the coming into force of this section. | 25 |
| (2) Section 11 of that Act (notices enforcing regulations on the use of apparatus) shall have effect with the following amendments in relation to any notice under subsection (1) or (2) of that section that is served after the coming into force of this subsection— | 30 |
| (a) paragraph (i) of the proviso to subsection (1) shall be omitted; and | |
| (b) for subsections (3) to (6) there shall be substituted— | |
| “(2A) Where an appeal with respect to a notice under this section is pending— | |
| (a) proceedings for an offence of contravening that notice (whether instituted before or after the bringing of the appeal) shall be stayed until the appeal has been finally determined; and | 35 |
| (b) any such proceedings shall be discharged if the notice is set aside in consequence of the appeal; | 40 |
| but this subsection does not affect any proceedings in which a person has been convicted at a time when there was no pending appeal. | |

- (2B) For the purposes of this section an appeal under section 140 of the Communications Act 2002 (c. 00) with respect to a notice under this section or a further appeal relating to the decision on such an appeal is pending unless –
- (a) that appeal has been brought to a conclusion or withdrawn and there is no further appeal pending in relation to the decision on the appeal; or 5
 - (b) no further appeal against a decision made on the appeal or on any such further appeal may be brought without the permission of the court and – 10
 - (i) in a case where there is no fixed period within which that permission can be sought, that permission has been refused or has not been sought; or
 - (ii) in a case where there is a fixed period within which that permission can be sought, that permission has been refused or that period has expired without permission having been sought.” 15
- (3) Section 12 of that Act (enforcement of regulations as to sales of apparatus etc.) shall have effect in relation to any notices served under subsection (1) of that section after the coming into force of this section with the substitution of the following subsections for subsections (2) to (4) – 20
- “(1A) Where an appeal with respect to a notice under subsection (1) of this section is pending – 25
- (a) proceedings for an offence of contravening that notice (whether instituted before or after the bringing of the appeal) shall be stayed until the appeal has been finally determined; and
 - (b) any such proceedings shall be discharged if the notice is set aside in consequence of the appeal; 30
- but this subsection does not affect any proceedings in which a person has been convicted at a time when there was no pending appeal.
- (1B) For the purposes of this section any appeal under section 140 of the Communications Act 2002 with respect to a notice under this section or a further appeal relating to the decision on that appeal is pending unless – 35
- (a) that appeal has been brought to a conclusion or withdrawn and there is no further appeal pending in relation to the decision; or
 - (b) no further appeal against any decision made on the appeal or on any such further appeal may be brought without the permission of the court and – 40
 - (i) in a case where there is no fixed period within which that permission can be sought, that permission has been refused or has not been sought; or
 - (ii) in a case where there is a fixed period within which that permission can be sought, that permission has been refused or that period has expired without permission having been sought.” 45

Information requirements

128 Information requirements in relation to wireless telegraphy licences

- (1) In Part 3 of the Wireless Telegraphy Act 1949 (c. 54) (supplemental provisions), before section 14 there shall be inserted –

“13A Information requirements

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- (1) Subject to the following provisions of this section, OFCOM may require any person who holds or has held a wireless telegraphy licence to provide OFCOM with all such information as they may require for the purpose mentioned in subsection (2).

- (2) That purpose is ascertaining whether any contravention of the terms, provisions or limitations of a wireless telegraphy licence has occurred or is occurring. 10

- (3) OFCOM shall not require the provision of any information under this section except –

- (a) by a demand for the information that sets out OFCOM’s reasons for requiring the information; and 15

- (b) where the making of a demand for that information is proportionate to the use to which the information is to be put in the carrying out of OFCOM’s functions.

- (4) A person required to provide information under this section must provide it in such manner and within such reasonable period as may be specified by OFCOM. 20

- (5) A person who fails to provide information in accordance with any requirement of OFCOM under this section is guilty of an offence.

- (6) In proceedings against any person for an offence under subsection (5) it shall be a defence for that person to show – 25

- (a) that it was not reasonably practicable for him to comply with the request within the period specified by OFCOM; but

- (b) that he has taken all reasonable steps to provide the required information after the end of that period. 30

- (7) A person is guilty of an offence if –

- (a) in pursuance of any requirement under this section, he provides any information that is false in any material particular; and

- (b) at the time he provides it, he either knows it to be false or is reckless as to whether or not it is false.” 35

- (2) In section 14(1A) of that Act (summary offences carrying a maximum fine of level 3 on the standard scale), before paragraph (f) there shall be inserted –

“(ea) any offence under section 13A(5) of this Act; or”.

Criminal proceedings etc.

129 Contraventions of wireless telegraphy licences

- (1) Where OFCOM determine that there are reasonable grounds for believing that a person is contravening, or has contravened, any term, provision or limitation of a wireless telegraphy licence, they may give that person a notification under this section. 5
- (2) A notification under this section is one which –
 - (a) sets out the determination made by OFCOM;
 - (b) specifies the term, provision or limitation, and the contravention, in respect of which that determination has been made; and 10
 - (c) specifies the period during which the person notified has an opportunity of doing the things specified in subsection (3).
- (3) Those things are –
 - (a) making representations about the matters notified; and
 - (b) complying with any notified term, provision or limitation of which he remains in contravention. 15
- (4) Subject to subsections (5) to (7), the period for the doing of those things that is specified in a notification under this section must be the period of one month beginning with the day after the day on which the notification was given.
- (5) OFCOM may, if they think fit, allow a longer period for the doing of the things mentioned in subsection (3) either – 20
 - (a) by specifying a longer period in the notification; or
 - (b) by subsequently, on one or more occasions, extending the specified period.
- (6) The person notified shall have a shorter period for the doing of those things if a shorter period is agreed between OFCOM and the person notified. 25
- (7) The person notified shall also have a shorter period if –
 - (a) OFCOM have reasonable grounds for believing that the case is a case of repeated contravention;
 - (b) they have determined that, in those circumstances, a shorter period would be appropriate; and 30
 - (c) the shorter period has been specified in the notification.

130 Meaning of “repeated contravention” in s. 129

- (1) For the purposes of section 129 a contravention is a repeated contravention, in relation to any notification with respect to that contravention if it falls within subsection (2) or (3). 35
- (2) A contravention falls within this subsection if –
 - (a) a previous notification under this section has been given in respect of the same contravention or in respect of any other contravention of the a term, provision or limitation of the same licence; 40
 - (b) the person who was given the notification took steps after receiving it to comply with the notified contravention; and
 - (c) the subsequent notification was given no more than twelve months after the giving of the earlier notification.

-
- (3) A contravention falls within this subsection if –
- (a) the person concerned has been convicted of an offence under section 1(1) of the Wireless Telegraphy Act 1949 (c. 54) in respect of the contravention to which the notification relates or in respect of any other contravention of a term, provision or limitation of the same licence; and 5
 - (b) the subsequent notification was given before the end of the relevant period.
- (4) The relevant period is the period of twelve months from the contravention in respect of which the person in question was convicted as mentioned in subsection (3)(a). 10
- (5) In calculating that period, the period between the institution of the criminal proceedings which led to the conviction and the conclusion of those proceedings shall be left out of account.
- (6) For the purposes of subsection (3)(b) criminal proceedings shall be taken to be concluded when no further appeal against conviction may be brought without the permission of the court and – 15
- (a) in a case where there is no fixed period within which that permission can be sought, permission has been refused or has not been sought; or
 - (b) in a case where there is a fixed period within which that permission can be sought, that permission has been refused or that period has expired without permission having been sought. 20
- (7) References in this section to a contravention of a term, provision or limitation of a licence includes a reference to a contravention of a term, provision or limitation contained in any previous licence of which the licence in question is a direct or indirect renewal. 25

131 Procedure for prosecutions of wireless telegraphy offences

- (1) This section applies to proceedings against any person (“the defendant”) for an offence under section 1 of the Wireless Telegraphy Act 1949 consisting in the contravention of the terms, provisions or limitations of any wireless telegraphy licence. 30
- (2) Proceedings to which this section applies are not to be brought at any time after the coming into force of this section unless, before they are brought, OFCOM have –
- (a) given the defendant a notification under section 129 in respect of the contravention to which the proceedings relate; and 35
 - (b) considered any representations made by him within the period allowed for the making of the representations.
- (3) Proceedings to which this section applies are not to be brought at any time after the coming into force of this section in respect of a contravention if –
- (a) it is a contravention to which a notification given to that person under section 129 relates; and 40
 - (b) that person has, during the period allowed under that section, complied with the notified term, provision or limitation.
- (4) Subsection (2) does not apply where OFCOM have certified that it would be inappropriate to follow the procedure in section 129 because of an immediate risk of – 45

-
- (a) a serious threat to the safety of the public, to public health or to national security; or
 - (b) serious economic or operational problems for persons (other than the defendant) who –
 - (i) use stations or apparatus for wireless telegraphy; or
 - (ii) are communications providers or make associated facilities available.
 - (5) Where –
 - (a) any proceedings to which this section applies are brought by virtue of subsection (4) without a notification having been given to the defendant, and
 - (b) the defendant is convicted in those proceedings of the offence under section 1 of the Wireless Telegraphy Act 1949 (c. 54),

the court, in determining how to deal with that person, shall have regard, in particular, to the matters specified in subsection (6).
 - (6) Those matters are –
 - (a) whether the defendant has ceased to be in contravention of the terms, provisions or limitations in question and (if so) when; and
 - (b) any steps taken by the defendant (whether before or after the commencement of the proceedings) for securing compliance with the obligations imposed on him by virtue of those terms, provisions or limitations.
 - (7) Notwithstanding anything in section 127 of the Magistrates’ Courts Act 1980 (c. 43) or Article 19 of the Magistrates’ Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26)) (limitation on time for bringing summary proceedings) where –
 - (a) OFCOM give a notification is given under section 129 in respect of a contravention, and
 - (b) that notification is given before the end of six months after the contravention,

the time for the bringing of proceedings for a summary offence in respect of that contravention shall be extended until the end of six months from the end of the period allowed, in the case of that notification, for the doing of the things mentioned in section 129(3) of this Act.
- 132 Special procedure for contraventions by multiplex licence holders**
- (1) OFCOM may impose a penalty on a person if –
 - (a) that person is or has been in contravention in any respect of the terms, provisions or limitations of any general multiplex licence;
 - (b) OFCOM have notified that person that it appears to them that those terms, provisions or limitations have been contravened in that respect; and
 - (c) that contravention is not one in respect of which proceedings for any offence under the Wireless Telegraphy Act 1949 have been commenced against that person before the giving of the notification for the purposes of paragraph (b).
 - (2) The amount of a penalty imposed under this section is to be such amount, not exceeding the greater of the following, as OFCOM think fit, namely –
 - (a) £250,000; and

-
- (b) the applicable percentage of the relevant amount of gross revenue.
- (3) In subsection (2) –
 “the applicable percentage” means –
 (a) in the case of a person who has not previously been subject to a penalty under this section in respect of a term, provision or limitation of the licence in question, 3 per cent.; and 5
 (b) in any other case, 5 per cent;
 “the relevant amount of gross revenue” means the amount specified in section 133.
- (4) The reference in subsection (3) to a person’s having been subject to a penalty in respect of a term, provision or limitation of a licence includes a reference to his having been so subject in respect of a term, provision or limitation contained in in any previous licence of which that licence is a direct or indirect renewal. 10
- (5) Where OFCOM impose a penalty on a person under this section, they shall –
 (a) notify that person of that decision and of their reasons for that decision; 15
 and
 (b) in that notification, fix a reasonable period after it is given as the period within which the penalty is to be paid.
- (6) A penalty imposed under this section –
 (a) must be paid to OFCOM; and 20
 (b) if not paid within the period fixed by them, is to be recoverable by them accordingly.
- (7) No proceedings for an offence under the Wireless Telegraphy Act 1949 (c. 54) shall be commenced against any person in respect of any contravention in respect of which a notification has already been given to that person for the purposes of this section. 25
- (8) The Secretary of State may by order amend this section so as to substitute a different amount for the amount for the time being specified in subsection (2)(a).
- (9) Section 94 shall apply for the ascertaining of a person’s gross revenue for any period for the purposes of this section as it applies for the obtaining of information for the purposes of section 93. 30
- (10) In this section –
 “general multiplex licence” means a wireless telegraphy licence relating to any station or apparatus which – 35
 (a) contains provisions or limitations by virtue of which the services for the purposes of which the use of the station or apparatus is authorised are confined to, or are allowed to include, one or more multiplex services; and
 (b) is held by a person who does not for the time being hold a 40
 licence under Part 1 or 2 of the 1996 Act in respect of any multiplex service to be broadcast using that station or apparatus;
 “multiplex service” means –
 (a) any service for broadcasting for general reception that consists 45
 in the packaging together of two or more services that are provided for inclusion together in that service by a combination of the relevant information in digital form; or

- (b) any service provided with a view to its being a service falling within paragraph (a) but in the case of which only one service is for the time being comprised in digital form in what is provided.

133 “Relevant amount of gross revenue” for the purposes of s. 132 5

- (1) The relevant amount of gross revenue for the purposes of section 132, in relation to a penalty imposed on any person, is –
 - (a) where the last accounting period of that person which falls before the contravention was a period of twelve months, the relevant part of his gross revenue for that period; and 10
 - (b) in any other case the amount which, by making any appropriate apportionments or other adjustments of the relevant part of his gross revenue for the accounting period or periods mentioned in subsection (2), is computed to be the amount representing the annual rate for the relevant part of his gross revenues. 15
- (2) The accounting period or periods referred to in subsection (1) are –
 - (a) every accounting period of his to end within the period of twelve months immediately preceding the contravention; and
 - (b) if there is no such accounting period, the accounting period of his which is current at the time of the contravention. 20
- (3) In this section references to the relevant part of a person’s gross revenue, in relation to any contravention of the terms, provisions or limitations of a licence, is a reference to so much of his gross revenue as is attributable to the provision of the service to which that licence relates.
- (4) For the purposes of this section – 25
 - (a) a person’s gross revenue for any period shall be calculated in accordance with such rules as may be set out in an order made by the Secretary of State; and
 - (b) such an order may also make provision about the manner of determining the extent to which any part of a person’s gross revenue is attributable to the provision of any service. 30
- (5) Rules made by virtue of subsection (4)(a) may provide for the amount of a person’s gross revenue for an accounting period that is current when the amount falls to be calculated to be taken to be the amount estimated by OFCOM, in accordance with the rules, to be the amount that will be his gross revenue for that period. 35
- (6) No order is to be made containing provision the making of which is authorised by subsection (4) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.
- (7) In this section – 40
 - “accounting period”, in relation to any person, means a period in respect of which any accounts of the undertaking carried on by him are prepared or, if one such period is comprised in another, whichever of those periods is or is closest to a twelve month period; and
 - “gross revenue”, in relation to any person, means the gross revenue of any undertaking carried on by that person. 45

134 Modification of penalties for certain wireless telegraphy offences

- (1) In subsection (1) of section 14 of the Wireless Telegraphy Act 1949 (c. 54) (either way offences), for paragraphs (aa) and (ab) there shall be substituted –
 - “(aa) any offence under section 1(1) of this Act consisting in the establishment or use of a station for wireless telegraphy, or the installation or use of wireless telegraphy apparatus, for the purpose of making a broadcast (within the meaning of section 9 of the Marine, &c., Broadcasting (Offences) Act 1967 (c. 41)); 5
 - (ab) any offence under section 1A of this Act where the relevant contravention of section 1 would constitute an offence falling within paragraph (aa);” 10
- (2) After that subsection, there shall be inserted –
 - “(1AA) Any person committing –
 - (a) any offence under section 1(1) of this Act other than –
 - (i) one which falls within subsection (1)(aa), or 15
 - (ii) one which falls within subsection (1A)(a), or
 - (b) any offence under section 1A of this Act other than –
 - (i) one which falls within subsection (1)(ab), or
 - (ii) one which falls within subsection (1A)(aa),
 shall be liable, on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale, or to both.” 20
- (3) This section applies in relation to only offences committed after the commencement of this section.

135 Fixed penalties for certain wireless telegraphy offences 25

Schedule 5 (which makes provision as respects fixed penalty notices for summary offences under the Wireless Telegraphy Act 1949) shall have effect.

136 Power of arrest

- (1) In Schedule 1A to the Police and Criminal Evidence Act 1984 (c. 60) (offences for which power of summary arrest available), after paragraph 2 there shall be inserted – 30

“Wireless Telegraphy Act 1949

 - 2A An offence mentioned in section 14(1) of the Wireless Telegraphy Act 1949 (offences under that Act which are triable either way).”
- (2) In Article 26(2) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)) (offences for which power of summary arrest available), after paragraph (g) there shall be inserted – 35
 - “(h) an offence mentioned in section 14(1) of the Wireless Telegraphy Act 1949 (offences under that Act which are triable either way);” 40

137 Forfeiture etc. of restricted apparatus

- (1) Apparatus to which this section applies shall be liable to forfeiture if, immediately before being seized, it was in a person’s custody or control in contravention of a prohibition imposed by an order under section 7 of the Wireless Telegraphy Act 1967 (c. 72) (restriction on dealing in and custody of certain apparatus). 5
- (2) This section applies to apparatus if it has been seized –
 - (a) in pursuance of a warrant granted under section 15(1) of the Wireless Telegraphy Act 1949 (c. 54); or
 - (b) in the exercise of the power conferred by section 79(3) of the Telecommunications Act 1984 (c. 12). 10
- (3) Apparatus forfeited under this section is to be forfeited to OFCOM and may be disposed of by them in any manner they think fit.
- (4) Schedule 6 (which makes provision in relation to the seizure and forfeiture of apparatus) shall have effect. 15
- (5) In section 7(5) of the Wireless Telegraphy Act 1967, paragraph (b) (which allows a person to have custody or control of restricted apparatus when authorised otherwise than by the Secretary of State) shall cease to have effect.
- (6) Sections 80 and 81 of the Telecommunications Act 1984 (which make provision for forfeiture of apparatus) shall cease to have effect. 20

Construction of 1949 Act

138 Modification of definition of “undue interference”

For subsection (5) of section 19 of the Wireless Telegraphy Act 1949 (meaning of undue interference) there shall be substituted –

- “(5) Interference with any wireless telegraphy shall not be regarded as undue for the purposes of this Act unless it is also harmful. 25
- (5A) For the purposes of this Act interference is harmful if –
 - (a) it creates dangers, or risks of danger, in relation to the functioning of any service provided by means of wireless telegraphy for the purposes of navigation or otherwise for safety purposes; or 30
 - (b) it degrades, obstructs or repeatedly interrupts anything which is being broadcast or otherwise transmitted by means of wireless telegraphy;
 - (i) is being so broadcast or otherwise transmitted in accordance with a licence under this Act, regulations under the proviso to section 1(1) of this Act or a grant of recognised spectrum access under Chapter 2 of Part 2 of the Communications Act 2002 (c. 00) or otherwise lawfully.” 35 40

139 Modification of definition of “wireless telegraphy”

- (1) The Secretary of State may by order modify the definition of “wireless telegraphy” in section 19(1) of the Wireless Telegraphy Act 1949 by

substituting a different frequency for the frequency (at the passing of this Act, 3,000 GHz) that is for the time being specified in that definition.

- (2) No order is to be made containing provision the making of which is authorised by this section unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

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CHAPTER 3

APPEALS

140 Appeals against decisions by OFCOM or the Secretary of State

- (1) This section applies to the following decisions by OFCOM, other than one specified in Schedule 7 – 10
- (a) any decision under this Part;
 - (b) any decision under a provision of the Wireless Telegraphy Act 1949 (c. 54);
 - (c) a decision under section 84 of the Telecommunications Act 1984 (c. 12);
 - (d) any decision under a provision of the Wireless Telegraphy Act 1998 (c. 6). 15
- (2) This section also applies to the following decisions by the Secretary of State –
- (a) a decision to give a specific direction under section 7 other than one as to the making of a decision specified in Schedule 7;
 - (b) a decision under section 106; 20
 - (c) a decision to give a specific direction under section 112, other than one as to the making of a decision specified in Schedule 7.
- (3) A person affected by any decision to which this section applies may appeal to the Tribunal against that decision.
- (4) An appeal can be made only by the sending of a notice of appeal to the Tribunal. 25
- (5) The notice of appeal must be sent within the period specified in Tribunal rules in relation to the decision under appeal.
- (6) The notice of appeal must set out – 30
- (a) the provision under which the decision under appeal was taken; and
 - (b) the grounds of appeal.
- (7) The grounds of appeal must be set out in sufficient detail to indicate – 35
- (a) to what extent (if any) the appellant contends that the decision under appeal was based on an error of fact or was wrong in law or both; and
 - (b) to what extent (if any) the appellant is appealing against the exercise of any discretion by OFCOM or by the Secretary of State.

141 Decisions of the Tribunal

- (1) The Tribunal shall dispose of an appeal under section 140(3) in accordance with this section.
- (2) The Tribunal shall decide the appeal on the merits and by reference to the grounds of appeal set out in the notice of appeal. 40

- (3) The Tribunal shall decide what (if any) is the appropriate action for the decision-maker to take in relation to the subject-matter of the decision under appeal.
- (4) The Tribunal shall then remit the decision under appeal to the decision-maker with such directions (if any) as the Tribunal considers appropriate for giving effect to its decision. 5
- (5) The Tribunal must not direct the decision-maker to take any action which he would not otherwise have power to take in relation to the decision under appeal.
- (6) It shall be the duty of the decision-maker to comply with any direction given under subsection (4). 10
- (7) In its application to a decision of the Tribunal under this section, paragraph 1(2)(b) of Schedule 3 to the Enterprise Act 2002 (c. 00) (decisions of the Tribunal) shall have effect as if for the reference to the undertaking to which commercial information relates there were substituted a reference to the person to whom such information relates. 15
- (8) In this section “the decision-maker” means OFCOM or the Secretary of State, according to who took the decision appealed against.

142 Appeals from the Tribunal

- (1) A decision of the Tribunal on an appeal under section 140(3) may itself be appealed. 20
- (2) An appeal under this section –
 - (a) lies to the Court of Appeal or to the Court of Session;
 - (b) must relate only to a point of law arising from the decision of the Tribunal. 25
- (3) An appeal under this section may be brought by –
 - (a) a party to the proceedings before the Tribunal; or
 - (b) any other person who has a sufficient interest in the matter.
- (4) An appeal under this section requires the permission of the Tribunal or of the court to which it is to be made. 30
- (5) In this section references to a decision of the Tribunal include references to a direction given by it under section 141(4).

143 Interpretation of Chapter 3

- In this Chapter –
- “the Tribunal” means the Competition Appeal Tribunal; and
 - “Tribunal rules” means rules made under section 14 of the Enterprise Act 2002. 35